

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re:
Oakwood Homes Corporation, et al.,
Debtors.

x
Chapter 11
Case No. 02-13396 (PJW)

OHC Liquidation Trust,
Plaintiff,
v.

Adv. Proc. No. 04-57060 (PJW)
Civil Action No. 07-799 (JJF)

Credit Suisse (f/k/a Credit Suisse First Boston, a Swiss banking corporation), Credit Suisse Securities (USA), LLC (f/k/a Credit Suisse First Boston LLC), Credit Suisse Holdings (USA), Inc. (f/k/a Credit Suisse First Boston, Inc.), and Credit Suisse (USA), Inc. (f/k/a Credit Suisse First Boston (U.S.A.), Inc.), the subsidiaries and affiliates of each, and Does 1 through 100,

Defendants.

**DECLARATION OF ELIZABETH M. DOWD
IN SUPPORT OF DEFENDANTS' MOTION TO EXCLUDE CERTAIN TESTIMONY
AND DOCUMENTS RELATING TO CREDIT RISK MANAGEMENT REVIEWS**

I, Elizabeth M. Dowd, declare as follows:

1. I am an attorney associated with the law firm of Linklaters LLP, counsel to Defendants in this action. I submit this Declaration in connection with Defendants' Motion Pursuant to Fed. R. Evid. 402 and 403 to Exclude Certain Testimony and Documents Relating to Credit Risk Management Reviews.

2. Attached hereto as Exhibit A is a true and correct copy of excerpts from the Deposition of Jared Felt, dated June 15, 2006.

3. Attached hereto as Exhibit B is a true and correct copy of excerpts from the Deposition of James Xanthos, dated August 24, 2006.

4. Attached hereto as Exhibit C is a true and correct copy of excerpts from the Deposition of Thomas Irwin, dated November 8, 2006.

5. Attached hereto as Exhibit D is a true and correct copy of excerpts from the Deposition of Fiachra O'Driscoll, dated June 29, 2006.

6. Attached hereto as Exhibit E is a true and correct copy of the March 13, 2001, Memorandum to File, CSFB-00512903.

7. Attached hereto as Exhibit F is a true and correct copy of the Supplemental Report of Alan C. Shapiro, Ph.D., dated August 28, 2007.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 16, 2008
New York, New York



Elizabeth M. Dowd, Esq.

EXHIBIT A

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE DISTRICT OF DELAWARE
3

4 IN RE:

5 OAKWOOD HOMES CORPORATION, ET AL.,)

6 DEBTORS,)

7)
8 OHC LIQUIDATION TRUST,) No. 02-13396 (PJW)
9)
10 PLAINTIFF,) VOLUME 1
11) PAGES 1 THROUGH 292
12 vs.)

13 CREDIT SUISSE FIRST BOSTON, A)
14 SWISS BANKING CORPORATION, CREDIT)
15 SUISSE FIRST BOSTON LLC, A)
16 DELAWARE LIMITED LIABILITY)
17 CORPORATION, CREDIT SUISSE FIRST)
18 BOSTON, INC., CREDIT SUISSE FIRST)
19 BOSTON (USA), INC., A DELAWARE)
20 CORPORATION AND A WHOLLY OWNED)
21 SUBSIDIARY OF CREDIT SUISSE FIRST)
22 BOSTON, INC., THE SUBSIDIARIES AND)
23 AFFILIATES OF EACH, AND DOES 1)
24 THROUGH 100,)

25 DEFENDANTS.)

19
20 VIDEOTAPED
21 DEPOSITION OF:

22 JARED FELT
23 THURSDAY, JUNE 15, 2006
24 LOS ANGELES, CALIFORNIA

25 REPORTED BY:
FELIPE F. CARRILLO, CSR 9555

<p>1 warehouse lender?</p> <p>2 A. That was the post – that was the entity that</p> <p>3 provided the loan purchase facility, as well as the</p> <p>4 provider of the loan purchase facility after bankruptcy.</p> <p>5 Q. Okay. All right. And can you tell me what New</p> <p>6 York branch is? How does it fit in the family of – is</p> <p>7 it a branch of some other corporation?</p> <p>8 A. It is the entity that has the legal right to lend</p> <p>9 money.</p> <p>10 Q. And is it a subsidiary?</p> <p>11 A. It is a bank – it's a bank.</p> <p>12 Q. It's a bank. Is it related in some way through</p> <p>13 common ownership or parent-subsidiary relationship to</p> <p>14 CSFB that signed the August 19th contract?</p> <p>15 A. It is a – I believe it is a federal reserve</p> <p>16 regulated entity that has ultimate control under the</p> <p>17 Credit Suisse group.</p> <p>18 Q. It is the parent of all other entities in the</p> <p>19 group?</p> <p>20 A. No.</p> <p>21 Q. When you say it has ultimate control, you lost me</p> <p>22 there.</p> <p>23 A. It is ultimately owned by the Credit Suisse</p> <p>24 group.</p> <p>25 Q. Oh, okay.</p>	<p>1 A. We had – I had worked on a team that helped</p> <p>2 Champion raise capital in early 2002.</p> <p>3 Q. All right. That was not a restructuring then?</p> <p>4 A. It was not.</p> <p>5 Q. And other than your attempt to help Champion</p> <p>6 raise capital, did your – did CSFB have any particular</p> <p>7 expertise in the manufactured housing industry?</p> <p>8 A. Credit Suisse provided or did securitizations for</p> <p>9 a number of other manufactured housing companies, as</p> <p>10 well as for CONSECO, a financing arm for the industry or</p> <p>11 finance company for the industry.</p> <p>12 Q. Did CSFB have any relationship with CONSECO other</p> <p>13 than securitization?</p> <p>14 A. Yes.</p> <p>15 Q. What was that?</p> <p>16 A. I don't know.</p> <p>17 Q. Do you know who within CSFB would likely know the</p> <p>18 answer to that question?</p> <p>19 A. There are a number of people who would.</p> <p>20 Q. Can you name a couple of them for me anyway?</p> <p>21 A. I cannot.</p> <p>22 Q. Okay. Do you know what group or branch to look</p> <p>23 in or can you give me any better guidance to who I</p> <p>24 would – who might I learn who these people were?</p> <p>25 A. It is a finance company. Perhaps the Financial</p>
<p>202</p> <p>1 A. A Swiss company.</p> <p>2 Q. And is that also true of either the CSFB entity</p> <p>3 this signed the August 19th contract or its parent?</p> <p>4 A. Yes.</p> <p>5 Q. So New York branch and the CSFB entities that</p> <p>6 signed the contract are sister companies?</p> <p>7 A. I'm not sure if they're sister or not. They are</p> <p>8 under the same ultimate ownership.</p> <p>9 Q. Okay.</p> <p>10 A. But separate legal entities with separate</p> <p>11 management.</p> <p>12 Q. Okay. Let's now return to Exhibit 10, if we</p> <p>13 could.</p> <p>14 Forgive me, but I've covered a number of these,</p> <p>15 things that I intend to ask you about this, and I will</p> <p>16 not trouble you with them again.</p> <p>17 As of the time of the preparation of this</p> <p>18 document, did you believe that CSFB had any particular</p> <p>19 expertise in the manufactured housing industry?</p> <p>20 A. We had worked – I had worked with another firm,</p> <p>21 another manufactured housing company.</p> <p>22 Q. And which was that?</p> <p>23 A. Champion Enterprises.</p> <p>24 Q. Had you also entered into a contract with</p> <p>25 Champion?</p>	<p>204</p> <p>1 Institutions Group.</p> <p>2 Q. All right. Was CSFB a lender to CONSECO?</p> <p>3 A. I don't know.</p> <p>4 Q. Have you told me everything you know about CSFB's</p> <p>5 relationship with CONSECO?</p> <p>6 A. We, Fitcher and I, went to CONSECO and offered to</p> <p>7 help them with restructuring services for their business</p> <p>8 as well.</p> <p>9 Q. When did that happen?</p> <p>10 MS. WARREN: I would like to caution the</p> <p>11 witness to just talk about public information with</p> <p>12 respect to CONSECO.</p> <p>13 THE WITNESS: Fair.</p> <p>14 BY MR. CASTANARES:</p> <p>15 Q. I don't think I'm going to ask you for any</p> <p>16 non-public information, and if I do, you let me know.</p> <p>17 A. That's non-public information.</p> <p>18 Q. When it happened is non-public information?</p> <p>19 A. The fact that it happened is non-public</p> <p>20 information.</p> <p>21 Q. Okay. I'm going to ask you for some non-public</p> <p>22 information, I guess.</p> <p>23 MS. WARREN: About other clients or</p> <p>24 potential clients of Credit Suisse? Because I'm not</p> <p>25 going to let him answer those questions.</p>

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<p>1 MS. WARREN: Objection to the form. 2 THE WITNESS: That's speculation. The 3 reason that it had -- the number of providers had 4 increased substantially because of profits in the space 5 in the early '90s. So if lenders, the potential loan 6 purchasers, saw it as profitable, they would have 7 reentered the market. 8 BY MR. CASTANARES: 9 Q. As of the time you prepared Exhibit 10, were you 10 aware that CSFB's credit department had recommended in 11 January of 2000 against providing some sort of line or 12 facility to Oakwood? 13 A. No. 14 Q. Did you become aware of that at some later date? 15 A. No. 16 Q. So is this the first you've heard of it right 17 now? 18 A. I saw a document yesterday long after the case 19 ended. 20 Q. And that's the first time you heard that 21 Mr. Zantheus had declined a proposed credit for Oakwood? 22 A. Yes. 23 MS. WARREN: Objection to the form. 24 BY MR. CASTANARES: 25 Q. Just so we understand, yesterday was the first</p>	<p>1 January '00 credit report on Oakwood if you had wanted 2 to get it? 3 A. I don't know. 4 MS. WARREN: Objection to the form. 5 BY MR. CASTANARES: 6 Q. You don't know? 7 A. I don't know. 8 Q. Would any other kind of -- was there any other 9 kind of internal inhibition on your being able to get 10 information from credit or Credit Risk Management if you 11 had wanted to do so in the course of the performance of 12 a financial services advisory contract? 13 A. New York branch is a separate entity. I have 14 never asked New York branch for information in 15 performing an assignment. 16 Q. Okay. So do I understand from that that the -- 17 did Mr. Zantheus work for New York branch? 18 A. I believe he does, but I don't know. 19 Q. Or at least he did then; right? 20 A. (Nods his head up and down). 21 Q. And as of about the time of the execution of the 22 August contract, was CSFB itself or New York branch, to 23 your knowledge, reducing its activities either as a 24 lender, if it had any, or as a provider of warehouse 25 lines in the manufactured home industry?</p>
<p>214</p> <p>1 time you learned that? 2 A. Yes. 3 Q. Okay. And that was in the course of reviewing 4 documents in preparation for this deposition? 5 A. It was because I was told that you had 6 requested -- 7 MS. WARREN: Hold. Hold. Don't go into 8 details. The short answer is yes. 9 THE WITNESS: Yeah. 10 BY MR. CASTANARES: 11 Q. The short answer is yes. I don't want to be 12 asking what your counsel told you. I just want to -- my 13 question was, what was the occasion of your reviewing 14 this document, was preparing for this deposition? 15 A. (Nods his head up and down). 16 Q. Okay. Now, did the Chinese wall that existed at 17 Oakwood, would that have prevented you in August of 2002 18 from getting Mr. Zantheus's report of January '00 if you 19 had wanted? 20 MS. WARREN: Objection to the form. You 21 used the term -- you said "Oakwood." I'm not sure 22 what you meant. 23 MR. CASTANARES: Let's start again. 24 Q. Did the Chinese wall that existed at CSFB, would 25 that have prevented you from obtaining Mr. Zantheus's</p>	<p>216</p> <p>1 MS. WARREN: Would you read that back, 2 please. 3 (Record read) 4 MS. WARREN: Objection to the form, but go 5 ahead. 6 THE WITNESS: There was less activity in the 7 space in the securitization market and in the industry, 8 therefore, the activity of Credit Suisse would have been 9 diminished. 10 BY MR. CASTANARES: 11 Q. Okay. Do you know? Do you know whether Credit 12 Suisse had decided to diminish its activities in this 13 field or was it purely a result of diminished amount of 14 business out there? 15 MS. WARREN: Are you asking about CSFB? 16 MR. CASTANARES: I'm using the same word as 17 the witness used, Credit Suisse. 18 THE WITNESS: CSFB would have diminished 19 its activities in the securitization market because 20 there were fewer securitizations. I don't know what New 21 York branch was doing. 22 BY MR. CASTANARES: 23 Q. Okay. And to the extent that CSFB was reducing 24 its activities in the securitization markets, it was 25 doing that purely because there was less business out</p>

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EXHIBIT B

1
2 UNITED STATES BANKRUPTCY COURT
3 DISTRICT OF DELAWARE

4 In Re:) Chapter 11
5 OAKWOOD HOMES CORPORATION,) Case No. 02-13396
6 et al.,) (PJW)
7 Debtors.) Jointly Administered

8 OHC LIQUIDATION TRUST,)
9 Plaintiff,)
10 vs.) Adv. Proc. No.

11 CREDIT SUISSE FIRST BOSTON, a Swiss banking corporation,)

12 CREDIT SUISSE FIRST BOSTON LLC, a Delaware limited liability corporation, CREDIT

13 SUISSE FIRST BOSTON, INC., CREDIT SUISSE FIRST BOSTON (U.S.A.), INC., a Delaware corporation and a wholly

14 owned subsidiary of CREDIT SUISSE FIRST BOSTON, INC., the) subsidiaries and affiliates) of each, and DOES 1 through 100,) Defendants.)

15 Defendants.)

16 August 24, 2006

17 8:43 a.m.

18
19 Deposition of JAMES XANTHOS, held at the
20 law offices of Linklaters, 1345 Avenue of the
21 Americas, New York, New York, pursuant to
22 agreement, before Donald R. DePew, an RPR, CRR and
23 Notary Public within and for the State of
24 New York.

1	James Xanthos	1	James Xanthos
08:45:43 2	A. We provide warehouse lines to mortgage banks. We also buy mortgages from sellers of mortgages. And it's any mortgage that doesn't meet Fannie Mae or Freddie Mac's guidelines.	08:47:40 2	vice president and then I was promoted to a vice president level.
08:45:45 3		08:47:44 3	Q. And were you in a credit management function throughout that employment?
08:45:48 4		08:47:45 4	A. Yes.
08:45:54 5		08:47:47 5	Q. And were you employed here in New York at all times?
08:45:58 6	Q. All right. Do your current duties in any way involve the manufactured housing business?	08:47:48 6	A. Yes.
08:46:00 7	A. No.	08:47:50 7	Q. Was Mr. Irwin your supervisor throughout your employment?
08:46:02 8	Q. When did you first go to work for Credit Suisse?	08:47:52 8	A. Not initially, but for the bulk of my employment at CSFB he was.
08:46:04 9	A. In October of 1999.	08:47:53 9	Q. Was he your supervisor at all times during which you dealt with Oakwood?
08:46:06 10	Q. And did you go to work there in a credit management function?	08:47:55 10	A. No. The initial supervisor was Michael Cricito.
08:46:08 11	A. Yes.	08:47:58 11	Q. Could you spell that for the reporter, please.
08:46:10 12	Q. Had you worked elsewhere before then?	08:47:59 12	A. Cricito?
08:46:12 13	A. In a credit risk management --	08:48:02 13	Q. Or just say it slowly.
08:46:13 14	Q. In any function.	08:48:05 14	A. Cricito.
08:46:14 15	A. Yes, before Credit Suisse First Boston --	08:48:07 15	And then Tom Irwin replaced him I guess the tail end of 1999, early 2000.
08:46:17 16	Q. Why don't you give me, if you would be so -- if you would be so kind give me a short rundown on your employment history since you graduated from your education.	08:48:15 18	Q. All right. How many other people
08:46:19 17	A. Sure. I graduated college,	08:48:17 19	
08:46:21 18	Fordham University, in 1989. And I started -- I	08:48:17 20	
08:46:23 19		08:48:19 21	
08:46:25 20		08:48:22 22	
08:46:27 21		08:48:25 23	
08:46:29 22		08:48:28 24	
08:46:31 23		08:48:33 25	
08:46:33 24		6	
08:46:35 25			
1	James Xanthos	1	James Xanthos
08:46:39 2	was a bank examiner for three and a half years at the Office of Thrift Supervision. And from there I went back to graduate school, received my MBA.	08:48:40 2	worked in credit risk management during the time that you dealt with Oakwood in your employment at CSFB?
08:46:43 3	And then I started at PaineWebber in 1996 and I was there for -- I was there up until October of 1999. Then I left PaineWebber for CSFB. And I was at CSFB from October of '99 until July of 2004.	08:48:44 3	A. I don't know the exact number.
08:46:47 4	Q. Okay. What did you do at PaineWebber?	08:48:47 4	Q. Can you give me any kind of range, is it five, or ten, or 100, or --
08:46:52 5	A. Also in credit risk management.	08:48:48 5	A. The amount of people that worked in credit?
08:46:57 6	Q. Did your duties there involve the manufactured housing industry?	08:48:49 6	Q. Is credit something different from credit risk management?
08:47:03 7	A. No.	08:48:51 7	A. No, credit risk management at one -- I take that to be how many people were in the immediate group within New York.
08:47:07 8	Q. So I take it you had no contact with Oakwood Homes in your time at PaineWebber?	08:48:54 8	Q. Okay. That's --
08:47:11 9	A. No.	08:48:56 9	A. In the credit risk management group within New York.
08:47:12 10	Q. What's your current office address, please?	08:48:58 10	Q. All right.
08:47:16 11	A. 390 Greenwich Street, New York, New York, 10013.	08:49:00 11	A. Is that just the amount of people?
08:47:18 12	Q. Would you give me a brief rundown of the positions and titles that you held during your time at Credit Suisse.	08:49:01 12	Q. Professionals.
08:47:23 13	A. I started off as an assistant	08:49:04 13	A. My best guess would be 40 people.
08:47:26 14		08:49:07 14	Q. And did you --
08:47:31 15		08:49:08 15	Was there some division of labor where certain of you concentrated on certain industries, or certain clients, or some sort of division like
08:47:32 16		08:49:10 16	
08:47:35 17		08:49:12 17	
08:47:37 18		08:49:13 18	
2		08:49:13 19	
3		08:49:15 20	
4		08:49:16 21	
5		08:49:20 22	
6		08:49:22 23	
7		08:49:24 24	
8		08:49:26 25	

1	James Xanthos	08:49:30 2	08:49:30 3	08:49:34 4	08:49:38 5	08:49:41 6	08:49:51 7	08:49:52 8	08:49:55 9	08:49:59 10	08:49:59 11	08:50:03 12	08:50:06 13	08:50:07 14	08:50:09 15	08:50:11 16	08:50:14 17	08:50:17 18	08:50:19 19	08:50:20 20	08:50:24 21	08:50:27 22	08:50:30 23	08:50:33 24	08:50:34 25	Q. So that would be reviews of – even just like unsecured or secured loans, for example?	A. Almost everything that we did was secured, on a secured basis.	Q. But it would involve any kind of credit risk or any kind of transaction that would present a credit risk issue to CSFB?	A. Yea.	Q. And when is the first time you can remember dealing with anything related to Oakwood?	A. November of 1999.	Q. Okay. And was that a \$75 million reverse repo proposal?	A. Yea.	Q. How did you happen to come into that transaction?	A. I was asked to – I was asked by my supervisor to – that there was a request from the banking group to look at – basically was to look at the financial statements of Oakwood Homes.	Q. And was your supervisor at that time Mr. Criscito?	A. Yes.	Q. Who was his supervisor at that time?	A. Dan Miller.	Q. Dan Miller?	A. Yes.	Q. All right. Was he your boss's supervisor throughout your employment at CSFB?	A. Yes.	Q. I'd like to ask you some questions about the process that you engaged in as a credit risk manager for your group.	After receiving an – and I'm going to speak in general here – after receiving an assignment from your supervisor what steps did you ordinarily take in the ordinary course to perform your function?	A. If it's a public company I would have	10	11	James Xanthos	gone onto the Internet and basically pulled down the most recent financial statements, 10-Qs, 10-Ks, whatever news articles I could find on the company that were in the public marketplace. I would have also gone onto Bloomberg and looked to see if there were any types of securitizations that were completed. Those were the normal initial steps of the credit risk management function.	Q. All right. And did you seek to gather – strike that.	If Credit Suisse people were dealing with that company on other matters, such as securitizations, for example, would you seek to gather further information from those people?	A. No.	Q. So in the ordinary course, for example, taking Oakwood now as an example, you wouldn't have gone to, say, Mr. O'Driscoll for further information?	MR. OSNATO: Let me object there.	Are we speaking hypothetically, because you used the word "example," or are we talking specifically about his recollection	12	13
1	James Xanthos	transaction?	A. I was asked to – I was asked by my supervisor to – that there was a request from the banking group to look at – basically was to look at the financial statements of Oakwood Homes.	Q. And was your supervisor at that time Mr. Criscito?	A. Yes.	Q. Who was his supervisor at that time?	A. Dan Miller.	Q. Dan Miller?	A. Yes.	Q. All right. Was he your boss's supervisor throughout your employment at CSFB?	A. Yes.	Q. I'd like to ask you some questions about the process that you engaged in as a credit risk manager for your group.	After receiving an – and I'm going to speak in general here – after receiving an assignment from your supervisor what steps did you ordinarily take in the ordinary course to perform your function?	A. If it's a public company I would have	10	11	James Xanthos	of work done for Oakwood?	MR. CASTANARES: No, I thought my question was clear, but if it wasn't I'll rephrase it.	Q. I'm trying to find out if you followed your ordinary course, path with respect to Oakwood, would you have gone to Mr. O'Driscoll for further information in your credit risk management function?	A. No.	Q. Did you seek any information in the ordinary course beyond what was available publicly?	A. No.	Q. In the ordinary course did your group do any modeling, or run any cash flows, or projections, or that sort of thing?	A. On the corporate entity?	Q. Yes.	A. That occurred as the review progressed.	Q. Okay. And when you asked me to distinguish the corporate entity from something else what were you asking me to distinguish it from?	12	13																												

1	James Xanthos	1	James Xanthos
08:54:13 2	A. Well, there's two ways to look at --	08:57:12 2	the credit group, there is an approval matrix
08:54:16 3	there's two ways that -- you know, at CSFB that we	08:57:17 3	depending on various different things, the dollar
08:54:21 4	looked at the entire credit picture. There was a	08:57:22 4	amount of a facility or the risk rating of a
08:54:26 5	corporate analysis, and a facility type of	08:57:25 5	facility. So depending on the amount that was
08:54:29 6	analysis, a securitization type of analysis. Most	08:57:30 6	being asked to be provided to a client and their
08:54:32 7	of our facilities were securitized credit	08:57:32 7	rating there would be a -- you know, there would
08:54:35 8	facilities, which were structured as	08:57:36 8	be a matrix of different approval levels.
08:54:38 9	securitizations.	08:57:40 9	Q. All right. Let me see if I could ask
08:54:40 10	Q. What do you mean by that term,	08:57:42 10	the question -- a slightly different question.
08:54:41 11	"securitized credit facilities"?	08:57:44 11	Let's suppose that in the ordinary
08:54:44 12	A. Meaning it is -- it resembles public	08:57:46 12	course you found a business that clearly did not
08:54:48 13	securitizations.	08:57:48 13	meet credit criteria, was it within your power to
08:54:55 14	Q. All right. And in those cases did you	08:57:50 14	turn it down or was it merely within your power to
08:55:00 15	run some sort of cash flows, or projections, or	08:57:53 15	recommend that it be turned down?
08:55:02 16	modeling?	08:57:55 16	A. It's in my power to recommend that it
08:55:06 17	A. Yes.	08:57:57 17	be turned down.
08:55:07 18	Q. And describe those for me, please.	08:57:58 18	Q. And would the person who would make the
08:55:10 19	A. Well, you would look -- you know, you	08:58:00 19	final decision then have been your immediate
08:55:14 20	would look at past securitizations and you would	08:58:02 20	superior if it was going to be turned down?
08:55:17 21	look at what types of enhancement levels were	08:58:08 21	A. Yes.
08:55:25 22	required to do a securitization. So a lot of this	08:58:09 22	Q. All right. And if you were
08:55:30 23	information is public. You would look to see what	08:58:10 23	recommending that it be granted would it be
08:55:32 24	types of credit enhancement levels were required	08:58:12 24	correct for me to infer that there was a certain
08:55:35 25	to achieve an A rating, a AA rating, a AAA rating.	08:58:15 25	level and dollar amount and other risk factors
14			16
1	James Xanthos	1	James Xanthos
08:55:45 2	Q. All right. And after looking at the	08:58:18 2	that would be within your power, and if not then
08:55:48 3	public information what was the next step that you	08:58:23 3	within your immediate superior's, and then if not
08:55:50 4	would take in the ordinary course of evaluating a	08:58:26 4	within his?
08:55:53 5	proposed credit?	08:58:28 5	MR. OSNATO: Objection as to the form.
08:55:57 6	A. Most times we would go to do an on site	08:58:29 6	You can answer the question if you
08:56:01 7	visit with management, especially if it was a new	08:58:30 7	understand it.
08:56:04 8	client. Here, again, it was a new client for me.	08:58:31 8	A. Can you just repeat it one more time.
08:56:06 9	So, you know, it's pretty common to go out and	08:58:33 9	Q. Yeah. Were there certain levels of
08:56:11 10	visit with the management team and hear the story	08:58:34 10	approval that you had authority to approve on your
08:56:15 11	directly from them.	08:58:37 11	own, and if it exceeded your own authority that
08:56:16 12	Q. All right. And after doing that what	08:58:39 12	your superior probably had that -- had a greater
08:56:18 13	was the next step in the ordinary course?	08:58:41 13	authority, and so forth up the line?
08:56:21 14	A. The next step would be to basically	08:58:43 14	A. Yes.
08:56:26 15	complete your -- normally at that point in time	08:58:46 15	Q. Speaking of the \$75 million reverse
08:56:30 16	you would have enough information to make a	08:58:49 16	repo facility that was proposed in '99 for
08:56:35 17	decision. And the decision would be -- would	08:58:52 17	Oakwood, would that have been within your
08:56:42 18	result in a credit write-up, to which you would	08:58:54 18	authority to grant if you had chosen to do so?
08:56:46 19	present to your manager and superior.	08:58:56 19	A. I don't recall.
08:56:49 20	Q. All right. And did you have a certain	08:58:59 20	Q. Now, I think you said that after you
08:56:52 21	level of authority that you could make a decision	08:59:02 21	got to the point of decision then there was some
08:56:59 22	yes or no or a particular credit?	08:59:05 22	sort of write-up or report that was prepared, am
08:57:02 23	A. Well, as the analyst you were the	08:59:07 23	I --
08:57:04 24	person responsible for doing the analysis of the	08:59:08 24	A. Yes.
08:57:07 25	credit and of the facility. Within CSFB, within	08:59:10 25	Q. All right. And tell me about that

1	James Xanthos	1	James Xanthos
08:59:12 2	process, please.	09:01:18 2	was my summation of what – where the credit was
08:59:13 3	A. It really is a summation of the	09:01:22 3	at that particular point in time.
08:59:15 4	analysis that was completed, from the review of	09:01:26 4	Q. All right. Was there anything that
08:59:19 5	public statements, from management meetings,	09:01:28 5	guided you to put negative information in credit
08:59:24 6	things such as that.	09:01:32 6	reports, whether you believed it or not?
08:59:25 7	Q. All right. And was the person in your	09:01:34 7	MR. OSNATO: Objection as to the form.
08:59:30 8	position, that is to say an analyst, the one who	09:01:35 8	You can answer.
08:59:33 9	had the primary responsibility for preparing that	09:01:37 9	A. Please repeat it one more time.
08:59:36 10	kind of report?	09:01:40 10	Q. Yeah. Either by any directions you had
08:59:37 11	A. Yes.	09:01:42 11	from your superiors or anything that was in the
08:59:37 12	Q. Were there criteria that governed what	09:01:44 12	manual or from any other source, did you have any
08:59:40 13	was supposed to go into such reports?	09:01:47 13	belief that it was your job to put negative
08:59:44 14	A. Yes.	09:01:50 14	information into credit reports, whether you
08:59:45 15	Q. Were those in some sort of manual?	09:01:53 15	believed that information to be true or not?
08:59:47 16	A. I believe so.	09:01:55 16	A. Anything that I would have written I
08:59:48 17	Q. What was the title of that manual,	09:01:59 17	would have written it because I believed it to be
08:59:50 18	please?	09:02:01 18	true.
08:59:50 19	A. I don't recall.	09:02:02 19	Q. All right. Now, in the ordinary course
08:59:51 20	Q. Was that a manual that was available to	09:02:05 20	then what would next happen after you prepared the
08:59:53 21	you in the CRM department?	09:02:07 21	credit report?
08:59:57 22	A. It's a manual that is available, yes.	09:02:09 22	A. Well, the credit report would be
09:00:01 23	Q. All right. If you wanted to ask	09:02:11 23	reviewed by my superiors and then we would meet
09:00:03 24	somebody for that manual what would you call it?	09:02:14 24	and discuss the findings and come to a conclusion
09:00:07 25	A. It would be a credit policy manual.	09:02:19 25	as to what we were going to decide.
	18		20
1	James Xanthos	1	James Xanthos
09:00:09 2	Q. All right. Did you have any part in	09:02:22 2	Q. And at that point was there some sort
09:00:12 3	the authorship of any portion of that manual?	09:02:24 3	of written record made of the conclusion or of the
09:00:15 4	A. I don't believe so.	09:02:27 4	deliberations of your meeting?
09:00:22 5	Q. In preparing such written reports,	09:02:29 5	A. I don't recall.
09:00:25 6	Mr. Xanthos, were you supposed to put in a bunch	09:02:31 6	Q. And in the ordinary course then to whom
09:00:29 7	of negative information, whether you believed it	09:02:33 7	would that decision be communicated, to the
09:00:31 8	or not, or were you supposed to put into the	09:02:37 8	borrower directly or to somebody else at CSFB?
09:00:35 9	report what you thought was actually true?	09:02:45 9	A. It normally would not be the borrower
09:00:37 10	MR. OSNATO: Objection as to the form	09:02:47 10	directly. It would be to the person that has
09:00:38 11	of the question.	09:02:50 11	proposed the facility.
09:00:39 12	You can answer it.	09:02:52 12	Q. And that would ordinarily be somebody
09:00:40 13	A. Can you please repeat the question.	09:02:53 13	else within CSFB?
09:00:42 14	Q. Yes. In preparing such reports did you	09:02:55 14	A. Yes.
09:00:46 15	understand your job to be to put into those	09:02:57 15	Q. All right. And in the ordinary course
09:00:49 16	reports negative information about the company,	09:02:58 16	was the communication of the decision made orally
09:00:52 17	whether or not you believed it to be true, or on	09:03:01 17	or in writing?
09:00:55 18	the other hand to put into the reports what you	09:03:02 18	A. I don't recall.
09:00:58 19	actually believed to be true?	09:03:03 19	Q. Were there occasions in your time at
09:01:00 20	A. The report was a summation of what I –	09:03:06 20	CSFB when a decision was communicated in writing
09:01:04 21	my evaluation of a company at that particular	09:03:10 21	to the other person?
09:01:08 22	point in time.	09:03:13 22	A. I don't recall.
09:01:10 23	Q. And did you endeavor to put into such	09:03:16 23	Q. Was there any kind of Chinese wall
09:01:13 24	reports what you actually believed to be true?	09:03:19 24	situation that existed between information that
09:01:16 25	A. Anything that was in the report, again,	09:03:21 25	you developed in the CRM function and the

1	James Xanthos businesspeople at CSFB, such that you were prohibited from communicating information to them?	1	James Xanthos A. A decision was made, yes.
09:03:26 2		09:06:04 2	Q. And that decision was communicated to someone, correct?
09:03:30 3		09:06:05 3	A. I would imagine so.
09:03:37 4	A. There is a Chinese wall, as there is in most firms. Anything that -- the write-ups were just for the credit risk management group. So I don't believe anyone would have seen the write-ups outside of the group.	09:06:07 4	Q. But you don't recall whether you were involved in making it?
09:03:39 5		09:06:09 5	A. I was involved with making a decision or having a viewpoint on a corporate credit. The process of who was told, and when, and how, I have no recollection of.
09:03:44 6		09:06:09 6	Q. All right. Let me ask you to look at what's been previously marked as Exhibit 112.
09:03:48 7		09:06:11 7	MR. CASTANARES: And I'll tell counsel for Citigroup I'm not sure I have enough copies of everything to show you --
09:03:50 8		09:06:13 8	MS. VALENTINE: That's all right, we can share.
09:03:53 9	Q. Okay. Were you prohibited from showing Oakwood's write-ups to Mr. O'Driscoll?	09:06:15 9	MR. CASTANARES: But the ones that I do have you can keep.
09:03:5610	A. I don't recall if I was prohibited, but I don't believe that he ever saw the write-ups.	09:06:1910	Q. Are you the author of this document, sir?
09:03:5811		09:06:2211	MR. OSNATO: You can take a moment, James, to familiarize yourself with it.
09:04:0412		09:06:2612	MR. CASTANARES: Yes.
09:04:0613	Q. Well, I really want to try to focus my question on whether you sense that there was any prohibition or inhibition upon your --	09:06:2713	
09:04:0814		09:06:4314	
09:04:1215		09:06:4415	
09:04:1516		09:06:4716	
09:04:1817		09:06:4817	
09:04:2018		09:06:4918	
09:04:2119	A. No one ever asked me for -- my whole time at CSFB no one ever asked for the credit reports. And to the best of my knowledge, they were never provided to anyone outside of the credit risk management group.	09:06:5119	
09:04:2420		09:06:5120	
09:04:2721		09:06:5321	
09:04:2922		09:06:5522	
09:04:3223		09:06:5523	
09:04:3924	Q. When a decision was communicated in the ordinary course to someone within CSFB was it	09:06:5724	
09:04:4225		09:07:0125	

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1	James Xanthos common that that person asked the reason for CRM's decision?	1	James Xanthos (Witness looks at document.)
09:04:45 2		09:07:02 2	A. Just from the review of these pages here I don't recall if I was the author of this document, just because there is no place on here that has a listing of who, in fact, put this together. So I can't tell you definitively whether I was the author or not.
09:04:49 3		09:07:46 3	Q. Were you involved in the credit review of this proposed credit?
09:04:56 4	A. It would be common. Just human nature that someone would ask why, yes or no.	09:07:49 4	A. Yes.
09:04:59 5		09:07:56 5	Q. Was there another analyst involved in the credit review of this proposed credit?
09:05:03 6	Q. And in the ordinary course then what did CRM do to respond to such inquiries?	09:08:00 6	A. To the best of my knowledge, no.
09:05:05 7		09:08:04 7	Q. So if this proposed credit followed the ordinary course would it be logical to infer that you were the likely author of this document?
09:05:10 8	A. I don't know.	09:08:09 8	MR. OSNATO: Objection as to the form. He's already testified that he doesn't recall authoring this document.
09:05:13 9	Q. Okay. Were you the person who communicated the negative recommendation on the \$75 million reverse repo decision to somebody within CSFB?	09:08:11 9	You can answer the question.
09:05:1610		09:08:1310	A. Like I said, I don't have a direct recollection of writing this credit memo or this update.
09:05:2011		09:08:1511	Q. Well, in the ordinary course would
09:05:2512		09:08:1712	
09:05:2813	A. Well, any -- my recommendation would have gone, as we described before, through the proper channels within CRM. What happened as to who was notified or who was told at different points in time, I had no knowledge.	09:08:1813	
09:05:3014		09:08:2214	
09:05:3315		09:08:2315	
09:05:3916		09:08:2716	
09:05:4417		09:08:2917	
09:05:4518	Q. You don't remember communicating the negative decision on that facility to anyone?	09:08:3218	
09:05:4619	A. Like I said, it would -- my recommendation would have went to my direct supervisor and to people above my direct supervisor.	09:08:3319	
09:05:5020		09:08:3520	
09:05:5221		09:08:3721	
09:05:5422		09:08:3922	
09:05:5823		09:08:4123	
09:06:0124	Q. Okay. And then a decision was made, correct?	09:08:4524	
09:06:0325		09:08:4625	

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<p>1 10:04:26 2 10:04:28 3 10:04:30 4 10:04:34 5 10:04:36 6 10:04:36 7 10:04:38 8 10:04:41 9 10:04:4210 10:04:4411 10:04:4512 10:04:4813 10:04:5114 10:05:0315 10:05:0516 10:05:0817 10:05:1218 10:05:1519 10:05:1920 10:05:2221 10:05:2422 10:05:2923 10:05:3224 10:05:3525</p> <p>James Xanthos A. It's not unusual. Q. Okay. And does looking at the name of Douglas Faulk, F-a-u-l-k, refresh your memory as to whom you met with at Oakwood? A. No. MR. OSNATO: Just to clarify, Tony, I think you meant to refer to Richard Faulk. MR. CASTANARES: I'm sorry, you're absolutely correct. Q. Do you recall anything specific that either Mr. Muir, or Mr. Faulk, or whomever you met with at Oakwood said? A. No. Q. What is a committed versus an uncommitted reverse repo facility? A. "Committed" is -- committed meaning the facility -- if it's 12-month committed meaning that the facility is in place for the 12 months. If it's uncommitted meaning there is no obligation for the facility to be outstanding for the period of time that you've agreed. So provided all the terms and conditions of a committed facility are met, the facility is outstanding. If it is a 12-month facility, for 12 months.</p>	<p>1 10:07:04 2 10:07:10 3 10:07:15 4 10:07:19 5 10:07:23 6 10:07:24 7 10:07:24 8 10:07:26 9 10:07:3010 10:07:3011 10:07:3212 10:07:3413 10:07:3714 10:07:3915 10:07:4116 10:07:4217 10:07:4518 10:07:4619 10:07:5420 10:07:5721 10:07:5922 10:08:0223 10:08:0924 10:08:1225</p> <p>James Xanthos the value of the security less a specific haircut. Q. And so if we have an asset which is a mortgage or a retail installment contract with a face value of 100 the haircut is a percentage taken off that? A. Yes. Q. And so a haircut of 19 percent would indicate that the lender would lend \$81 on that asset. A. Yes. Q. And then is it correct that in a reverse repo facility the borrower is essentially required to purchase the asset back from the lender? A. Yes, at a specific point in time. Q. For \$81 plus a rate of interest; is that right? A. Yes. Q. And what is meant by the term "risk free haircut"? A. Risk free haircut is -- the meaning there is a -- if you say -- the terminology we used in credit risk management was that if you -- basically you're not taking -- the haircut is</p>
<p>62</p> <p>1 10:05:43 2 10:05:50 3 10:05:53 4 10:05:57 5 10:05:58 6 10:05:59 7 10:06:02 8 10:06:05 9 10:06:0610 10:06:1011 10:06:1312 10:06:1813 10:06:2614 10:06:2815 10:06:3116 10:06:3617 10:06:3718 10:06:3919 10:06:4220 10:06:4621 10:06:4822 10:06:5223 10:06:5524 10:06:5825</p> <p>James Xanthos Q. All right. And did committed versus uncommitted reverse repo facilities have a different risk characteristic from the perspective of the lender? A. Yes. Q. Describe that, please. A. Committed you are in the facility for the amount of period of time that you've -- through the maturity, provided all of the conditions are met versus uncommitted can be the facility is not obligated -- you're not obligated to be out for I'll say 12 months. Q. In an uncommitted facility is the lender basically free to turn down any proposed transaction within it at will? A. Yes. Q. So it's basically an option on the part of the lender to lend or not to lend, is that it? A. Yes. Q. And describe for me briefly, please, what a reverse repo facility is. A. It's where the counterparty is providing you with securities and you're providing the counterparty with cash, which is derived from</p>	<p>64</p> <p>1 10:08:15 2 10:08:23 3 10:08:29 4 10:08:31 5 10:08:35 6 10:08:37 7 10:08:42 8 10:08:44 9 10:08:4610 10:08:4811 10:08:5212 10:08:5913 10:09:0214 10:09:0515 10:09:0916 10:09:1217 10:09:1418 10:09:1719 10:09:1920 10:09:2121 10:09:2322 10:09:2423 10:09:2624 10:09:2625</p> <p>James Xanthos protecting you from any type of risk. Meaning if a AAA -- if a AAA enhancement level was let's say 20 percent and you have a haircut of 20 percent theoretically you were a AAA, so you were at -- theoretically don't have any risk in the transaction. Q. And what do you mean by the term "enhancement" in this context? A. Everything -- when I say enhancement I'm referring to securitization enhancement, meaning if a most recent deal had a 20 percent enhancement to AAA, meaning a credit enhancement below the seniors notes, that's translating to a risk free haircut of 20 percent for a AAA advance. Q. What is an enhancement? A. It's subordination, it's overcollateralization, and it's excess spread. Q. It's one of those three things or a combination? A. Actually it could be a combination of all three. Q. And when you say excess spread what do you mean by that term, please? A. It's the difference between what the</p>

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1	James Xanthos that was the conclusion that I came up with.	1	James Xanthos substitute a different copy of Exhibit --
10:14:18 2	Q. Well, how did you conclude that it was weaker than other players in the industry?	10:16:22 2	MR. OSNATO: Why don't we just -- do you want to use a Post-it so he can --
10:14:20 3	A. Just looking at the financial statements of other companies within the industry. And I made the judgment that I thought at that point in time that Oakwood was having issues.	10:16:24 3	MR. CASTANARES: No, actually it doesn't really matter because Exhibit 54 has already been marked. This is a previously marked exhibit. It doesn't really matter that he's written on it.
10:14:22 4	Q. Issues greater than other players in the industry, correct?	10:16:25 4	MR. OSNATO: I understand. No, I take your point. But if you're asking him to write on it further I don't know that that's a good idea.
10:14:25 5	A. I think issues -- I think, like I said before, most companies within this industry were facing the same issues. And I think me writing this was -- I was still learning the industry at that point in time. So, again, this was my estimation of what I -- where I thought Oakwood was at that point in time.	10:16:26 5	MR. CASTANARES: No, I'm not asking him to write on it further. I was only suggesting that since he did write on it, we substitute, but then I realized that's really not necessary.
10:14:26 6	Q. Okay. But what caused you to use the superlative saying that Oakwood was the weakest company in this industry?	10:16:26 6	MR. OSNATO: I agree, there's no grievous harm done here.
10:14:31 7	A. I don't recall.	10:16:31 7	MR. CASTANARES: No even mild harm here.
10:14:34 8	Q. Nonetheless, you did believe that at the time or you wouldn't have written it down, correct?	10:16:31 8	Q. Is there a BB minus rating that's like a BB as opposed to triple that's someplace between B minus and BB minus?
10:14:40 9	A. I believe so.	10:16:34 9	
10:14:43 10		10:16:3510	
10:14:44 11		10:16:3611	
10:14:46 12		10:16:3712	
10:14:48 13		10:16:3813	
10:14:53 14		10:16:3814	
10:14:57 15		10:16:4015	
10:15:01 16		10:16:4216	
10:15:04 17		10:16:4417	
10:15:05 18		10:16:4418	
10:15:07 19		10:16:4419	
10:15:10 20		10:16:4620	
10:15:11 21		10:16:4921	
10:15:12 22		10:16:5022	
10:15:14 23		10:16:5123	
10:15:17 24		10:16:5324	
10:15:17 25		10:16:5925	
	70		72
1	James Xanthos	1	James Xanthos
10:15:26 2	Q. Now, in the next paragraph -- I'm sorry, it's the last paragraph in this -- under this conclusion header, "It should be noted."	10:17:01 2	A. The next level below BBB minus is BB plus, then it goes down from there.
10:15:31 3	A. Okay.	10:17:04 3	Q. Okay. So this is six or seven runs down?
10:15:35 4	Q. All right. And it says that in June '99 Oakwood was internally rated BBB minus.	10:17:08 4	A. I don't know the exact number, but it is below the BBB minus level.
10:15:38 5	Q. And when you say "Internally rated" that's within CSFB?	10:17:13 5	Q. It is several runs down; is that right?
10:15:39 6	A. Within CRM.	10:17:14 6	A. It is.
10:15:43 7	Q. Within CRM.	10:17:15 7	Q. What caused Oakwood to go several runs down within CRM's mind in the space of six months?
10:15:48 8	Q. And the next paragraph refers to a B minus, is that a lower rating than BBB minus?	10:17:17 8	A. Again, I can't speak for, you know, why the rating was BBB minus in June of 1999. All I can tell you is from my evaluation of the credit when I looked at it, in my viewpoint the rating was a B minus.
10:15:50 9	A. Yes.	10:17:20 9	Q. You were the person who assigned that rating?
10:15:51 10	Q. How many runs down is it?	10:17:2210	A. Myself and from discussions after reviewing the company with my managers, yes.
10:15:53 11	A. I might have to sit here and -- I mean --	10:17:2311	Q. All right. Do you know who had assigned the earlier rating in June?
10:15:58 12	Q. Don't write anything.	10:17:2612	A. I don't recall.
10:16:00 13	MR. OSNATO: Please don't write anything.	10:17:2913	Q. At the time that you gave it the
10:16:04 14		10:17:3214	
10:16:04 15		10:17:3615	
10:16:09 16		10:17:3916	
10:16:10 17		10:17:4217	
10:16:10 18		10:17:4418	
10:16:12 19		10:17:4619	
10:16:13 20		10:17:4720	
10:16:13 21		10:17:5021	
10:16:14 22		10:17:5422	
10:16:17 23		10:17:5523	
10:16:19 24		10:17:5824	
10:16:21 25	MR. CASTANARES: Let me suggest that we	10:18:0325	

1	James Xanthos	1	James Xanthos
10:23:56 2	managers were ex-Price Waterhouse accountants?	10:26:50 2	by that, so please read whatever you think is
10:24:04 3	A. I don't know.	10:26:52 3	necessary.
10:24:05 4	Q. Does it have anything to do with the	10:26:53 4	(Witness looks at document.)
10:24:08 5	prior sentence, which discusses their lack of	10:27:33 5	A. Can you please repeat the question.
10:24:10 6	understanding of their marketplace?	10:27:36 6	Q. Yes.
10:24:14 7	A. I don't know.	10:27:38 7	What was this \$10.7 million loss on the
10:24:17 8	Q. Now, what did you know in the following	10:27:43 8	sale of loans?
10:24:21 9	sentence, that "Various Rating Agencies have also	10:27:44 9	A. I don't recall.
10:24:2410	noted and commented on management's performance	10:27:4710	Q. Well, when you talk about the sale of
10:24:2711	and execution?"	10:27:5011	loans were these -- did these sales occur in
10:24:2912	What had you seen from rating agencies?	10:27:5412	securitizations?
10:24:3213	A. I'm taking -- you know, as part of the	10:27:5613	A. I don't recall.
10:24:3414	diligence this is -- I've read -- I read rating	10:27:5614	Q. Did you learn of any other transactions
10:24:3715	agency reviews and that was the comment that	10:27:5815	where the company sold loans besides
10:24:4316	agencies had put out there.	10:28:0216	securitizations?
10:24:5617	Q. Now, did you go down to North Carolina	10:28:0317	A. I don't recall.
10:25:0318	together with Mr. Cricicito and Mr. O'Driscoll on	10:28:1418	Q. In the following sentence after the
10:25:0819	the same plane?	10:28:1519	10.7 million you state, "It is hard to believe
10:25:1420	A. I don't recall.	10:28:2520	that management will not continue to experience
10:25:1521	Q. Did you come back together?	10:28:2721	the same or greater levels of losses on the sale
10:25:1722	A. I don't recall.	10:28:3122	of its loans due to the fact that the company must
10:25:1823	Q. Do you recall whether you discussed any	10:28:3723	securitize quarterly (in order to free up its
10:25:2024	of these things with Mr. O'Driscoll at all?	10:28:4024	warehouse lines) even if doing so results in large
10:25:2225	A. I don't recall.	10:28:4425	losses."
	78		80
1	James Xanthos	1	James Xanthos
10:25:28 2	Q. Specifically can you recall whether you	10:28:47 2	Under what circumstances would
10:25:30 3	discussed with Mr. O'Driscoll your prediction in	10:28:49 3	quarterly securitizations result in large losses?
10:25:33 4	the next paragraph, that management would not meet	10:28:54 4	A. I don't recall.
10:25:37 5	forecasted profitability levels?	10:28:57 5	Q. Well, as you understood securitizations
10:25:40 6	A. I don't recall.	10:29:01 6	for a company such as Oakwood, is it possible for
10:25:43 7	Q. And did you have any basis for making	10:29:06 7	a company such as Oakwood to lose money in a
10:25:45 8	that prediction, other than what you got from	10:29:09 8	securitization?
10:25:48 9	publicly available information and from your visit	10:29:12 9	A. I do not know.
10:25:5010	with the executives at Oakwood?	10:29:1410	Q. So do you have any recollection of what
10:25:5711	A. Please repeat the question.	10:29:1611	you meant by that sentence at the time you wrote
10:26:0012	Q. When you predicted that management	10:29:1912	it?
10:26:0313	would not meet the forecasted profitability levels	10:29:2213	A. No.
10:26:0814	in the next reporting period or in the future did	10:29:2814	Q. Did the publicly available documents
10:26:1215	you have any basis for making that statement other	10:29:3115	indicate to you whether Oakwood had made or lost
10:26:1416	than what you had derived from publicly available	10:29:3616	money on securitizations in the past?
10:26:1817	information and from your visit to the executives	10:29:3917	A. I do not recall.
10:26:1918	in North Carolina?	10:29:4018	Q. In the ordinary course do publicly
10:26:2219	A. No.	10:29:4219	available documents for companies such as Oakwood
10:26:2820	Q. Now, in the next paragraph beginning	10:29:4720	disclose that information?
10:26:3121	with the words "Consumer Finance" -- you're	10:29:5221	A. Again, I do not recall.
10:26:3722	probably going to need to read this paragraph, I	10:29:5822	Q. What was the basis of your conclusion
10:26:3923	recognize. But you in the middle of that	10:29:5923	that Oakwood would have to engage in such
10:26:4224	paragraph, you talk about loss on sale of loans of	10:30:0224	securitizations, whether or not they suffered
10:26:4525	10.7 million. And I'm going to ask what you meant	10:30:0425	losses?
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1	James Xanthos	1	James Xanthos
10:30:12 2	A. I don't recall.	10:33:00 2	Q. All right. Turning to the paragraph
10:30:13 3	Q. Or was it that you recognized, sir,	10:33:02 3	that begins with the word "Management," what was
10:30:16 4	that Oakwood would run out of money if it didn't	10:33:06 4	the basis of your prediction that future
10:30:19 5	engage in securitization transactions, even though	10:33:09 5	securitizations would be disastrous if the company
10:30:23 6	those securitization transactions might result in	10:33:11 6	had to sell at unfavorable prices to
10:30:25 7	losses to Oakwood?	10:33:14 7	uncreditworthy customers?
10:30:27 8	A. I don't recall.	10:33:25 8	(Witness looks at document.)
10:30:33 9	Q. Oakwood would have run out of money had	10:33:43 9	A. Can you please repeat the question.
10:30:34 10	it not engaged in securitization transactions,	10:33:45 10	MR. CASTANARES: Would the reporter
10:30:37 11	correct?	10:33:46 11	please read it back.
10:30:39 12	A. I don't recall.	10:33:47 12	(Record read.)
10:30:52 13	Q. You knew that Mr. O'Driscoll was the	10:34:08 13	A. I don't recall.
10:30:53 14	person at CSFB in charge of Oakwood's	10:34:09 14	Q. Is that something you discussed with
10:30:59 15	securitizations, correct?	10:34:11 15	Mr. O'Driscoll?
10:31:00 16	MR. OSNATO: Objection as to the form.	10:34:14 16	A. No.
10:31:02 17	You can answer.	10:34:15 17	Q. Did you observe anything about the
10:31:03 18	A. I knew that Mr. O'Driscoll was the main	10:34:18 18	company's credit underwriting standards at that
10:31:08 19	point of contact for Oakwood.	10:34:21 19	time?
10:31:11 20	Q. Okay. And you knew that CSFB was the	10:34:23 20	A. No.
10:31:15 21	underwriter of a large majority of Oakwood	10:34:26 21	Q. What was the basis of your concern that
10:31:18 22	securitizations, correct?	10:34:29 22	the company might have to sell to uncreditworthy
10:31:20 23	A. Yes.	10:34:32 23	customers?
10:31:21 24	Q. Okay. Did you inquire of	10:34:33 24	A. I don't recall.
10:31:23 25	Mr. O'Driscoll as to whether Oakwood was gaining	10:34:37 25	Q. Did Oakwood differ from other players

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1	James Xanthos	1	James Xanthos
10:31:26 2	or losing money on securitizations?	10:34:40 2	in the industry in terms of the potential
10:31:29 3	A. I don't recall.	10:34:45 3	necessity to sell at unfavorable prices to
10:31:30 4	Q. Did you inquire of Mr. O'Driscoll	10:34:48 4	uncreditworthy customers?
10:31:32 5	whether, in fact, Oakwood needed to continue doing	10:34:50 5	A. I don't recall.
10:31:36 6	quarterly securitizations, whether or not it	10:35:00 6	Q. And assuming that the company would
10:31:38 7	gained or lost money on those transactions?	10:35:06 7	have to sell at unfavorable prices to
10:31:42 8	A. I don't recall.	10:35:10 8	uncreditworthy customers, how would that have
10:31:42 9	Q. When you used the term warehouse	10:35:13 9	caused future securitizations to be disastrous?
10:31:45 10	facility in this document were you referring to	10:35:25 10	A. Well, anytime a change in underwriting
10:31:47 11	the same kind of facility that you have earlier	10:35:30 11	occurs, whether it be good or bad, future
10:31:49 12	today characterized as a securitized credit	10:35:35 12	performance will most likely reflect what changes
10:31:52 13	transaction?	10:35:39 13	were made at any given point in time.
10:31:57 14	A. I don't recall.	10:35:42 14	Q. And how does that relate to the
10:32:08 15	Q. In the paragraph that begins with the	10:35:44 15	question I just asked?
10:32:09 16	term "As noted" you conclude that management had	10:35:47 16	A. Well, I think your question was how
10:32:15 17	used long-term debt and equity to finance current	10:35:49 17	would securitization performance change over time?
10:32:19 18	assets.	10:35:53 18	Q. Why would future securitizations be
10:32:21 19	Do you see that?	10:35:55 19	disastrous if management had to sell at
10:32:27 20	(Witness looks at document.)	10:35:57 20	unfavorable prices to uncreditworthy customers?
10:32:43 21	A. Okay.	10:36:03 21	A. I don't recall why that statement was
10:32:44 22	Q. Was there any connection in your mind	10:36:06 22	made.
10:32:46 23	between — or relationship between that fact and	10:36:15 23	Q. You observed this company again in 2001
10:32:49 24	the need to do constant securitizations?	10:36:18 24	in connection with a transaction that you have
10:32:55 25	A. No.	10:36:22 25	called a securitized credit facility, correct?

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<p>1 James Xanthos</p> <p>11:57:21 2 MR. CASTANARES: Yes.</p> <p>11:57:22 3 MR. OSNATO: Because Mr. Xanthos</p> <p>11:57:23 4 appears to be looking at the first two pages</p> <p>11:57:26 5 of the narrative document.</p> <p>11:57:27 6 MR. CASTANARES: Oh, I'm sorry.</p> <p>11:57:28 7 MR. OSNATO: Let's try that again.</p> <p>11:57:28 8 MR. CASTANARES: Hold on one second.</p> <p>11:57:30 9 THE WITNESS: I'm sorry.</p> <p>11:57:3010 Q. I'm going to ask you to look at the</p> <p>11:57:3211 first two pages of Exhibit 138, which is Bates</p> <p>11:57:3512 stamped 99 and 00, and ask you what function that</p> <p>11:57:3813 document performed other than simply summarizing</p> <p>11:57:4414 the transaction.</p> <p>11:57:4415 A. I think that's all it was meant to</p> <p>11:57:4616 represent, as well as who the ultimate sign-off on</p> <p>11:57:5117 the credit was.</p> <p>11:57:5318 Q. All right. And the ultimate sign-off</p> <p>11:57:5719 being Irwin, Miller, and O'Brien; is that correct?</p> <p>11:58:0020 A. Yes.</p> <p>11:58:0521 Q. Do you know who Deborah Herrera was?</p> <p>11:58:0922 A. She was in the control/operations</p> <p>11:58:1423 group. They basically processed these credit</p> <p>11:58:1724 applications.</p> <p>11:58:2025 Q. Was that part of CRM?</p>	<p>1 James Xanthos</p> <p>11:59:38 2 Q. What exactly is the "conduit group"?</p> <p>11:59:41 3 A. It's the funding arm of the bank, which</p> <p>11:59:44 4 funded most of these facilities.</p> <p>12:00:01 5 Q. Was the conduit group the arm that</p> <p>12:00:03 6 generally would be taking the credit risk that you</p> <p>12:00:05 7 were being asked to evaluate?</p> <p>12:00:09 8 A. It would depend on the specific credit</p> <p>12:00:12 9 or situation.</p> <p>12:00:14 10 Q. In this case was it?</p> <p>12:00:24 11 A. It appears that in this case it wasn't.</p> <p>12:00:27 12 Q. Who was it in this case?</p> <p>12:00:30 13 A. From the write-up that you provided me</p> <p>12:00:32 14 it seems that it is CSFBi that is taking on the</p> <p>12:00:37 15 credit risk.</p> <p>12:00:38 16 Q. All right. Now, in the ordinary course</p> <p>12:00:41 17 did you review credit risk undertaken by CSFBi?</p> <p>12:00:45 18 A. No.</p> <p>12:00:48 19 Q. Was there any other transaction besides</p> <p>12:00:50 20 this one in which you did so?</p> <p>12:00:52 21 A. Not that I recall.</p> <p>12:00:53 22 Q. Do you have any understanding of why it</p> <p>12:00:55 23 was that you were asked to do so in connection</p> <p>12:00:57 24 with this one transaction?</p> <p>12:00:59 25 A. Not that I recall.</p>
<p>130</p> <p>1 James Xanthos</p> <p>11:58:21 2 A. I believe so.</p> <p>11:58:26 3 Q. And her duties were clerical?</p> <p>11:58:28 4 A. I believe so.</p> <p>11:58:29 5 Q. How about Prescott Harris?</p> <p>11:58:36 6 A. The same.</p> <p>11:58:37 7 Q. Okay. And is this a document that you</p> <p>11:58:39 8 prepared, these first two pages?</p> <p>11:58:41 9 A. No.</p> <p>11:58:4110 Q. Who would have prepared that?</p> <p>11:58:4311 A. I think it would be -- this is system</p> <p>11:58:4612 generated.</p> <p>11:58:5613 Q. All right. So it wouldn't have had a</p> <p>11:58:5814 specific author?</p> <p>11:58:5915 A. It would. You can see above</p> <p>11:59:0216 Mr. Miller, Mr. Irwin, and Mr. O'Brien's</p> <p>11:59:0717 signature, that the -- I guess the recommendation</p> <p>11:59:1218 came through from the conduit group,</p> <p>11:59:1519 Mr. Alberto Zonca.</p> <p>11:59:1920 Q. Okay.</p> <p>11:59:2021 A. Just take a step back.</p> <p>11:59:2322 The credit process evolved over time</p> <p>11:59:2723 where you could -- you would see an officer within</p> <p>11:59:3124 the conduit group submit a credit package, which</p> <p>11:59:3525 would have been reviewed by the credit group.</p>	<p>132</p> <p>1 James Xanthos</p> <p>12:01:00 2 Q. Does CSFBi, to your knowledge, have or</p> <p>12:01:03 3 did it at the time have its own credit risk</p> <p>12:01:06 4 management team?</p> <p>12:01:07 5 A. I don't know.</p> <p>12:01:12 6 Q. Is there somebody at CSFBi that you</p> <p>12:01:15 7 dealt with with respect to this transaction?</p> <p>12:01:18 8 A. Not that I recall.</p> <p>12:01:19 9 Q. What did you understand CSFBi to be?</p> <p>12:01:2310 A. I don't recall.</p> <p>12:01:3411 Q. Now, did you do a completely new credit</p> <p>12:01:3812 review at the time of this transaction similar to</p> <p>12:01:4313 the one you had done a year before with respect to</p> <p>12:01:4614 the reverse repo or did you just simply build on</p> <p>12:01:4915 the old one?</p> <p>12:01:5016 A. That I don't recall.</p> <p>12:01:5417 Q. Did you --</p> <p>12:01:5518 I take it with respect to this one at</p> <p>12:01:5619 least you examined publicly available documents?</p> <p>12:02:0020 A. Always evaluate publicly available.</p> <p>12:02:0221 Q. Do you recall whether you made a new</p> <p>12:02:0322 visit to the company in connection with this one?</p> <p>12:02:0623 A. I don't recall.</p> <p>12:02:0924 Q. Do you recall anything else that you</p> <p>12:02:1025 did or any other sources of information that you</p>

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1	James Xanthos	1	James Xanthos
12:02:12 2	had in connection with the review that is part of	12:05:44 2	about the assumptions used for that purpose?
12:02:16 3	Exhibit 138?	12:05:47 3	MR. OSNATO: Objection as to the form.
12:02:22 4	(Witness looks at document.)	12:05:55 4	(Witness looks at document.)
12:02:58 5	A. It seems that I'm -- that there were	12:06:01 5	A. I don't know.
12:03:03 6	three items that were being asked for as	12:06:03 6	Q. Do you know what interests it was that
12:03:05 7	follow-ups, which were obtained. It's actually on	12:06:09 7	were being evaluated?
12:03:08 8	802. It appears that most of the information I	12:06:11 8	A. Per this write-up it says "Retained
12:03:11 9	received was from public -- EDGAR public	12:06:14 9	Residual Interests."
12:03:16 10	documents. And here there's three other items	12:06:16 10	Q. Do you know what those consisted of?
12:03:21 11	that were being asked for. I guess some of them	12:06:19 11	A. This is the excess spread that we
12:03:24 12	would be public, some of them wouldn't be.	12:06:20 12	talked about earlier. The difference between the
12:03:34 13	Q. All right. So does that help you to	12:06:22 13	bonds -- the weighted average coupon upon the
12:03:36 14	answer the question of whether -- of exactly what	12:06:26 14	asset versus what the investor is receiving in
12:03:39 15	you did, besides looking at public documents, in	12:06:29 15	terms of a coupon.
12:03:42 16	connection with this credit review?	12:06:34 16	Q. I'm sorry, could you elaborate on that
12:03:44 17	A. I don't recall.	12:06:36 17	explanation for me a little bit, I don't think I
12:03:53 18	Q. There's evidence that as part of this	12:06:38 18	follow it.
12:03:55 19	transaction CSFB or somebody in the Credit Suisse	12:06:39 19	A. It's the excess -- it's the difference
12:04:00 20	family was to get a warrant to purchase	12:06:41 20	between the interest that is being earned on a
12:04:01 21	approximately 20 percent of the stock of Oakwood	12:06:44 21	mortgage, let's say it's 8 percent, for example,
12:04:04 22	Homes, was that something you were aware of at the	12:06:46 22	versus the bond that is paying 5 percent to
12:04:07 23	time?	12:06:49 23	investors. It's that 3 percent difference.
12:04:10 24	A. I was aware of it, but I didn't know	12:06:55 24	Q. In doing credit evaluations for
12:04:12 25	the specifics of it.	12:07:02 25	companies having securitizations such as these did
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1	James Xanthos	1	James Xanthos
12:04:14 2	Q. Okay. Are you aware of any effort made	12:07:07 2	CRM in the ordinary course attempt to evaluate
12:04:16 3	at that time to place a value upon that warrant?	12:07:11 3	those residual interests?
12:04:20 4	A. No.	12:07:19 4	A. I don't recall.
12:04:25 5	Q. In the ordinary course when such	12:07:19 5	Q. Well, can you give me any information
12:04:28 6	consideration was received by CSFB in a	12:07:21 6	at all about how this information under
12:04:31 7	transaction being evaluated by CRM would anybody	12:07:25 7	"Assumptions Used to Value Retained Residual
12:04:36 8	make an effort to place a value upon it?	12:07:30 8	Interests" came to be in this document,
12:04:44 9	A. I don't know.	12:07:32 9	Exhibit 138?
12:04:45 10	Q. Do you recall asking any questions	12:07:33 10	A. No.
12:04:46 11	about that warrant?	12:07:37 11	Q. And can you give me any information at
12:04:47 12	A. It had nothing to do with my	12:07:38 12	all about where you got this information?
12:04:51 13	evaluation.	12:07:41 13	A. No.
12:05:02 14	Q. Let me ask you to turn to page 805.	12:07:44 14	Q. Did you attempt to evaluate how
12:05:04 15	And under -- down at the bottom there there is a	12:07:47 15	realistic these valuations were?
12:05:11 16	bold-faced caption, "Assumptions Used to,"	12:07:50 16	A. I don't recall.
12:05:16 17	et cetera.	12:07:55 17	Q. Let me ask you to look at the next
12:05:17 18	Do you see that?	12:07:57 18	paragraph.
12:05:19 19	A. Yes.	12:08:02 19	(Witness looks at document.)
12:05:32 20	Q. Were you the one who performed	12:08:08 20	A. "Beginning in 1994"?
12:05:35 21	evaluation of residual interests?	12:08:11 21	Q. Yes. Please read through that
12:05:38 22	A. No.	12:08:13 22	paragraph. I'm going to ask you really about the
12:05:38 23	Q. Do you know who did?	12:08:16 23	last sentence of it.
12:05:41 24	A. No.	12:08:17 24	(Witness looks at document.)
12:05:43 25	Q. What was the source of this information	12:08:43 25	A. Okay.

1	James Xanthos	1	James Xanthos
14:15:16 2	this e-mail?	14:17:22 2	anyone other than Credit Suisse's counsel and
14:15:17 3	A. I don't recall.	14:17:26 3	obviously your counsel who is here today?
14:15:20 4	Q. Did you ever see any particular	14:17:28 4	A. No.
14:15:23 5	documents or did conversation occur that informed	14:17:36 5	Q. Okay. Did you see any documents in
14:15:26 6	you that the decision-making function from a risk	14:17:38 6	preparing for your deposition that refreshed your
14:15:31 7	management perspective was transferred from CRM to	14:17:41 7	memory of the events that I've asked you about
14:15:34 8	this other group?	14:17:44 8	today?
14:15:40 9	A. I'm sure I don't remember.	14:17:44 9	MR. OSNATO: You can answer that yes or
14:15:42 10	Q. All right. Other than supervising you	14:17:47 10	no for now.
14:15:46 11	in the various Oakwood-related transactions that	14:17:48 11	A. I saw a few documents.
14:15:53 12	we have discussed today do you know whether	14:17:51 12	Q. Did any of them refresh your memory
14:15:55 13	Mr. Irwin performed any other role?	14:17:53 13	about the events that I've asked you about today?
14:16:02 14	MR. OSNATO: Object to the form of the	14:17:55 14	A. Not - not to any large degree, no.
14:16:02 15	question.	14:17:59 15	Q. Well, to any degree?
14:16:03 16	I mean, in his job at Credit Suisse	14:18:07 16	A. Again, depending on the situation it
14:16:06 17	across the board?	14:18:12 17	may have - I may have remembered something over
14:16:08 18	MR. CASTANARES: With respect to	14:18:16 18	the past six years, yes.
14:16:10 19	Oakwood. Yeah, sorry.	14:18:18 19	Q. Well, to the extent that any documents
14:16:11 20	A. What's the question one more time?	14:18:20 20	you saw in preparation for this deposition did
14:16:13 21	Q. Yeah. Did Mr. Irwin do anything with	14:18:23 21	refresh your memory of those events, have we seen
14:16:14 22	respect to the Oakwood transactions, other than	14:18:27 22	them today in this deposition?
14:16:17 23	send the e-mails we've seen today and supervise	14:18:28 23	A. I believe so, yes.
14:16:20 24	you?	14:18:29 24	MR. CASTANARES: Thank you, sir. I
14:16:21 25	MR. OSNATO: Same objection.	14:18:30 25	have no further questions for you.

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1	James Xanthos	1	James Xanthos
14:16:22 2	You can answer if you understand the	14:18:32 2	THE WITNESS: Thank you.
14:16:24 3	question.	14:18:33 3	THE VIDEOGRAPHER: Any further
14:16:25 4	A. I don't recall.	14:18:34 4	questions?
14:16:26 5	Q. Okay. Do you know whether he ever met	14:18:34 5	MR. OSNATO: No further questions from
14:16:28 6	with any Oakwood people?	14:18:35 6	defense counsel.
14:16:30 7	A. Again, I don't recall.	14:18:37 7	THE VIDEOGRAPHER: Okay. This
14:16:33 8	Q. Do you know whether he ever met with	14:18:37 8	concludes for today, August 24, 2006, the
14:16:36 9	any Berkshire people?	14:18:40 9	videotaped deposition of James Xanthos. The
14:16:38 10	A. I do not know.	14:18:43 10	total number of tapes used was four. Going
14:16:38 11	Q. Or discussed anything with them about	14:18:47 11	off the record. The time is 2:18 p.m.
14:16:41 12	Oakwood?	14:18:59 12	(Time noted: 2:18 p.m.)
14:16:41 13	A. I have no knowledge about it.	14:18:59 13	<hr/>
14:16:42 14	Q. Okay. Have you now told me everything	14:18:59 14	JAMES XANTHOS
14:16:45 15	that you can recall about any direct contact that	14:18:59 15	Subscribed and sworn to before me
14:16:47 16	you had with any Oakwood people?	14:18:59 16	this _____ day of _____, 2006.
14:16:50 17	A. To the best of my ability, yes.	14:18:59 17	<hr/>
14:16:53 18	Q. Okay. And that was limited to that one	14:18:59 18	(Notary Public) My Commission Expires:
14:16:56 19	meeting that you had with respect to the first	19	
14:16:59 20	credit, and then there's a reference to a	20	
14:17:01 21	conference call with Mr. Muir in another e-mail.	21	
14:17:05 22	Do you recall any direct contact with	22	
14:17:07 23	Oakwood other than those two events?	23	
14:17:08 24	A. Not that I can remember, no.	24	
14:17:20 25	Q. Have you discussed this lawsuit with	25	

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EXHIBIT C

THOMAS IRWIN
UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

-----X
In Re:
OAKWOOD HOMES CORPORATION,
et al.,

Debtors.

Chapter 11
Case No. 02-13396 (PJW)

-----X
OHC LIQUIDATION TRUST,

Plaintiff,

v. ADV. Proc.No. 04-57060 (PJW)

CREDIT SUISSE FIRST BOSTON, a
Swiss banking corporation,
CREDIT SUISSE FIRST BOSTON
LLC, a Delaware limited
liability corporation, CREDIT
SUISSE FIRST BOSTON, INC.,
CREDIT SUISSE FIRST BOSTON
(U.S.A.), INC., a Delaware
corporation and a wholly owned
subsidiary of CREDIT SUISSE
FIRST BOSTON, INC., the
subsidiaries and affiliates of
each, and DOES 1 through 100,

Defendants.

-----X
November 8, 2006
9:04 a.m.

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Page 16

1 **THOMAS IRWIN**

2 A. It was different at different times.
 3 Q. Could you just outline for me your
 4 formal education after high school and any
 5 employment you may have had prior to working at
 6 Credit Suisse?

7 A. Rutgers University, Cook College,
 8 Bachelor's of Science in environmental and
 9 business economics, 1986. 1986 to 1987, E.F.
 10 Hutton & Company. 1987 to 1988, Dean Witter &
 11 Company. 1988 to 1990 with Elders Finance.
 12 1990 to 1993 with PaineWebber. '93 to '95 with
 13 MBIA, Inc. And then '95 to 2003 with Credit
 14 Suisse First Boston, originally Credit Suisse,
 15 then Credit Suisse First Boston.

16 Q. Great. Thank you.

17 Now I want to talk just generally
 18 about how Credit Suisse's credit department
 19 worked. Not focusing on any particular
 20 proposals at all, but could you just explain to
 21 me the process from start to finish in terms of
 22 how would a particular credit normally be
 23 proposed, how would it be evaluated, and then
 24 how would a decision be rendered on any given
 25 proposal in the ordinary course of business?

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1 **THOMAS IRWIN**

2 A. During -- I don't understand.
 3 Q. Just generally how did your department
 4 work, like where would you get assignments from?
 5 I will break it down into pieces.

6 A. Thank you.

7 Q. Where would credit proposals that your
 8 department evaluated come from?

9 A. During what time period? I'm sorry.

10 Q. During late 1999 to 2000?

11 A. Credit proposals were generated by the
 12 business units, they were submitted into
 13 analysts, analysts would perform the initial
 14 credit review, they would submit them to me.

15 Q. What would you do upon receiving that
 16 review?

17 A. Would work -- analyze the credit with
 18 the analyst, clarify questions. If I felt that
 19 the credit warranted being passed on to a senior
 20 credit officer I would.

21 Q. Was there some type of back and forth
 22 conversation with the particular business unit
 23 that proposed the -- any given credit?

24 A. Yes.

25 Q. What was the nature of that

1 **THOMAS IRWIN**

2 conversation?

3 A. They would present credits, we would
 4 ask questions, they would answer the questions.

5 Q. In the ordinary course of business did
 6 you usually prepare any written work product
 7 beyond what the analyst prepared?

8 A. No.

9 Q. So your role was principally reviewing
 10 the work product of the analyst, honing it and
 11 following up on that review?

12 A. Yes.

13 Q. Then what in the ordinary course of
 14 business would Mr. Miller and Mr. O'Brien be
 15 responsible for doing?

16 A. It was a sequential credit process, so
 17 if I approved the credit and wanted to bring it
 18 on for further approval I would bring it up to
 19 Mr. Miller, then subsequently it could go on to
 20 Mr. O'Brien.

21 Q. Were there particular thresholds of
 22 credit beyond a certain amount? Your approval
 23 would be sufficient for, say, X amount, but any
 24 amount in excess of that particular amount would
 25 need to be submitted to Mr. Miller or Mr.

<p style="text-align: right;">Page 18</p> <p>1 THOMAS IRWIN 2 general credit assessment. 3 Q. In the ordinary course of business, 4 would you normally review the underlying 5 company, the strength of -- say, for example, in 6 your transaction resembling some of those 7 involving Oakwood Homes in which certain 8 affiliates of the company were originators of 9 receivables, would you ordinarily review the 10 credit profile of the originator or the 11 underlying company? 12 MR. OSNATO: Objection as to the form. 13 A. Yes. 14 MR. OSNATO: You can answer. 15 A. Yes. 16 Q. What sort of factors bore on that 17 analysis? 18 A. Traditional credit analysis, assets, 19 liabilities, cash flow, income. 20 Q. In the course of the credit analysis, 21 what role did potential fees or profit to Credit 22 Suisse play? 23 A. Excuse me, I'm sorry, could you 24 rephrase that? 25 Q. Sure. When reviewing any given credit</p>	<p style="text-align: right;">Page 20</p> <p>1 THOMAS IRWIN 2 information principally be publicly available 3 information or would it be nonpublic 4 information? 5 A. It could be either or. 6 Q. Now, once the credit analysis had been 7 performed, how if at all did the results of that 8 analysis go out of the credit department? For 9 example, in your discussions with the business 10 unit that proposed a particular credit, would 11 you relay to them the factors that bore on the 12 credit analysis? 13 A. Sometimes they were present when the 14 decision was made, sometimes we would notify 15 them. 16 Q. In the course of notifying them, would 17 you explain why the credit was denied? 18 A. Yes. 19 Q. What sort of elaborations would you 20 provide, what sort of detail would you provide? 21 A. What was necessary. 22 Q. Was there any detail that you were 23 barred from providing? 24 A. I don't recall. 25 Q. Was there any detail that in the</p>
<p style="text-align: right;">Page 19</p> <p>1 THOMAS IRWIN 2 proposal, what role did the potential fees or 3 income that could be earned by a business unit 4 of Credit Suisse play in the analysis of whether 5 or not to grant that particular credit proposal? 6 MR. OSNATO: Objection as to the 7 foundation. You can answer. 8 A. It didn't. 9 Q. It played absolutely no role 10 whatsoever? 11 A. In the -- in the analysis? It could 12 be considered in the analysis. 13 Q. So it did play some role, then? 14 A. It could be included in the analysis. 15 Q. Now, in the course of performing a 16 credit analysis, where did the information that 17 was fed into that analysis come from? 18 A. I'm sorry? 19 Q. In the course of analyzing a 20 particular credit, where would the analyst look 21 for information to prepare the analysis? 22 A. It would be presented to us by the 23 business unit or sometimes directly from the 24 counter party. 25 Q. In the ordinary course would such</p>	<p style="text-align: right;">Page 21</p> <p>1 THOMAS IRWIN 2 ordinary course of business you generally didn't 3 provide? 4 A. No, I don't think so. 5 Q. Now I want to talk specifically about 6 Oakwood Homes. 7 When, Mr. Irwin, did you get first 8 involved with any credit proposal relating to 9 the Oakwood Homes Corporation? 10 A. I don't recall precisely. 11 Q. Do you recall approximately? 12 A. November of '99. 13 Q. Do you recall what that credit 14 proposal was? 15 A. No. 16 Q. During the time period between late 17 1999 and early 2003, approximately what percent 18 of your professional time would you say you 19 spent on credit issues relating to Oakwood 20 Homes? 21 A. I wouldn't know. 22 Q. Were there variances in the amount of 23 time that you spent on issues relating to 24 Oakwood Homes? 25 A. It varied.</p>

EXHIBIT D

1

2 UNITED STATES BANKRUPTCY COURT
3 DISTRICT OF DELAWARE

4 In Re:) Chapter 11
5 OAKWOOD HOMES CORPORATION,) Case No. 02-13396
6 et al.,) (PJW)
7 Debtors.) Jointly Administered
8 OHC LIQUIDATION TRUST,)
9 Plaintiff,)
10 vs.) Adv. Proc. No.
11 CREDIT SUISSE FIRST BOSTON, a) 04-57060 (PJW)
12 Swiss banking corporation,)
13 CREDIT SUISSE FIRST BOSTON)
14 LLC, a Delaware limited)
15 liability corporation, CREDIT)
SUISSE FIRST BOSTON, INC.,)
CREDIT SUISSE FIRST BOSTON)
(U.S.A.), INC., a Delaware)
corporation and a wholly)
16 owned subsidiary of CREDIT)
SUISSE FIRST BOSTON, INC., the)
subsidiaries and affiliates)
of each, and DOES 1 through)
100,)
Defendants.)

17

June 29, 2006

18

9:22 a.m.

19

Deposition of FIACHRA O'DRISCOLL, held
20 at the law offices of Linklaters, 1345 Avenue of
21 the Americas, New York, New York, pursuant to
22 notice, before Donald R. DePew, an RPR, CRR and
23 Notary Public within and for the State of
24 New York.

25

1	Fiacra O'Driscoll	1	Fiacra O'Driscoll
10:02:55 2	A. Okay. Can you rephrase your question?	10:05:04 2	of Credit Suisse to a given counterparty.
10:02:57 3	Q. Who were the persons who had the	10:05:07 3	Q. All right. Maybe we can cut this
10:02:59 4	authority to say yes or nay to that facility?	10:05:08 4	short.
10:03:01 5	MR. OSNATO: And I'm going to object	10:05:08 5	Were the people that had the ultimate
10:03:03 6	as --	10:05:10 6	decision-making authority on whether or not to
10:03:04 7	A. You know --	10:05:12 7	grant this facility in the CRM department?
10:03:04 8	MR. OSNATO: -- to the --	10:05:16 8	Because -- let me try to distinguish
10:03:04 9	Let me finish, please.	10:05:18 9	this for you. There are certain companies in
10:03:0510	THE WITNESS: Yeah.	10:05:2010	which a credit manager will make a recommendation.
10:03:0611	MR. OSNATO: -- as to -- I think we	10:05:2311	And there is some executive who has the authority
10:03:0612	could move forward a lot more expeditiously	10:05:2512	to make the decision, irrespective of whether he's
10:03:0913	if we used a term other than yea or nay.	10:05:2813	following the credit manager's recommendation or
10:03:1214	Because, as Mr. O'Driscoll has testified,	10:05:3014	not. I'm just trying to find out who the ultimate
10:03:1415	there are multiple approvals.	10:05:3315	decision-making authorities were on this
10:03:1616	And if you are asking specifically	10:05:3416	particular facility.
10:03:1817	about a credit approval it may be useful to	10:05:4017	A. The -- Tom Irwin, who is a credit
10:03:2218	phrase your question accordingly, rather than	10:05:4318	officer for the Oakwood facility, technically had
10:03:2419	across the board.	10:05:4719	the authority to say yes or nay for the
10:03:2520	MR. CASTANARES: You may answer.	10:05:4920	transaction on his own. In this particular
10:03:2721	A. Within -- let me try to answer your	10:05:5321	instance he chose not to, which was not an unusual
10:03:3022	question as follows, on any transaction of this	10:05:5622	thing. That was actually fairly common, because
10:03:3323	sort, which I think is probably the easier way to	10:05:5823	even though people had this theoretical capability
10:03:3624	explain it, we would make a submission, which	10:06:0124	to approve things, a lot of stuff got done by
10:03:4025	might be in writing or might be a verbal	10:06:0525	committee, if you will, within credit risk

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1	Fiacra O'Driscoll	1	Fiacra O'Driscoll
10:03:43 2	submission to credit risk management, usually only	10:06:08 2	management.
10:03:48 3	after we had discussed the matter with our	10:06:10 3	And he -- the ultimate approval for it
10:03:51 4	supervisors.	10:06:12 4	came not just from him, but I know for certain
10:03:52 5	And that that submission to credit risk	10:06:14 5	that his supervisor, which was a gentleman by the
10:03:56 6	management would detail the nature of the company	10:06:18 6	name of David Mallett --
10:04:01 7	in question to whom we would be entering into the	10:06:21 7	Q. Spell that, please.
10:04:04 8	loan purchase facility, or the warehouse, or the	10:06:21 8	A. David Mallett, M-a- -- I'm not so sure
10:04:07 9	reverse repo agreement, or whatever the form of it	10:06:24 9	I'm going to have the spelling right. I'm going
10:04:1010	was.	10:06:2610	to have a crack at it. M-a-l-e-t-t-a.
10:04:1111	Individual people within credit risk	10:06:3211	Q. All right.
10:04:1312	management had formally the authority to commit to	10:06:3212	A. Give or take.
10:04:1713	transactions with exposures up to certain limits.	10:06:3313	And in turn his supervisor,
10:04:2414	And that -- there was kind of a hierarchy, if you	10:06:3514	Robert O'Brien, were involved in the
10:04:2815	will, of the exposure limits that somebody would	10:06:3715	transaction, as well as his supervisor, which
10:04:3016	be allowed to enter into.	10:06:4016	was Dick Thornburgh, Richard Thornburgh.
10:04:3217	How that exposure was measured varied	10:06:4417	Q. How does James Xanthos, X-a-n-t-h-o-s,
10:04:3418	significantly, depending upon the nature of the	10:06:4918	fit into that hierarchy?
10:04:3619	transaction in question, because you would have to	10:06:5119	A. He was an associate who worked for
10:04:3920	approach CRM for transactions not merely ones that	10:06:5320	Tom Irwin.
10:04:4821	would be things such as, say, a warehouse loan or	10:06:5521	Q. All right. Had you completed your
10:04:5122	something of that sort. But things such as	10:06:5722	answer?
10:04:5323	credit -- such as, for instance, interest rate	10:06:5823	A. Yes.
10:04:5724	swaps, things such as delayed settlement, really	10:06:5824	Q. Thank you.
10:05:0025	anything that could give rise to a credit exposure	10:06:5925	All right. And do I take it then, sir,

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1	Fischra O'Driscoll	1	Fischra O'Driscoll
10:07:05 2	that to the extent that you had contact with CSFB	10:09:14 2	You can answer.
10:07:11 3	New York branch regarding this facility your	10:09:15 3	A. I believe that's correct.
10:07:13 4	contact was with somebody in the CRM department?	10:09:18 4	Q. And one of the things that CSFB was
10:07:19 5	A. Not necessarily, because CRM covered	10:09:20 5	attempting to do was to put into place what it
10:07:23 6	not just the New York branch, but it also covered	10:09:24 6	referred to at the time as a warehouse facility,
10:07:26 7	Credit Suisse First Boston Corporation, the	10:09:26 7	correct?
10:07:28 8	broker-dealer. I would also have talked to	10:09:27 8	MR. OSNATO: Same objection.
10:07:30 9	Tony Giordano, who is the – one of the officers	10:09:30 9	A. I don't think that's correct.
10:07:35 10	at least during that period of time within the	10:09:32 10	Q. Do you think it referred to it at the
10:07:36 11	New York branch, and probably to other people as	10:09:34 11	time as a loan purchase facility?
10:07:39 12	well.	10:09:37 12	A. I don't recall us putting together
10:07:40 13	Q. All right. And Mr. Giordano was	10:09:39 13	anything in that period of time.
10:07:44 14	employed by the broker-dealer?	10:09:41 14	Q. I'm sure you didn't, but the question
10:07:46 15	A. I believe he was employed by the	10:09:42 15	is whether you were attempting to do so.
10:07:48 16	branch.	10:09:45 16	A. Not that I recall.
10:07:50 17	Q. Is that the broker-dealer?	10:09:45 17	Q. So is it your testimony that during the
10:07:51 18	A. No, the branch.	10:09:49 18	period leading up to Oakwood's bankruptcy CSFB was
10:07:53 19	Q. The branch. Okay.	10:09:53 19	not making any effort to put together some sort of
10:07:55 20	All right. And what was his role in	10:09:56 20	warehouse or loan purchase facility for Oakwood?
10:07:59 21	that – this facility?	10:10:00 21	MR. OSNATO: Same objection.
10:08:02 22	A. His role was to represent the branch.	10:10:02 22	You can answer.
10:08:04 23	Q. On issues other than CRM issues?	10:10:05 23	A. During that period of time there was a
10:08:07 24	A. Precisely.	10:10:06 24	loan purchase facility in place. There – I was
10:08:08 25	Q. Okay. And what was the nature of his	10:10:10 25	never asked to put together any type of warehouse,

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1	Fischra O'Driscoll	1	Fischra O'Driscoll
10:08:09 2	responsibility?	10:10:13 2	that I can recall.
10:08:11 3	A. Ensuring that from the point of view of	10:10:14 3	Q. Or loan purchase facility?
10:08:12 4	the branch that the transaction was put together	10:10:16 4	A. Or a loan purchase facility.
10:08:17 5	correctly.	10:10:17 5	Q. Were you asked to obtain a waiver from
10:08:19 6	Q. All right. Now, had this cast of	10:10:19 6	CSFB New York branch of the provision in that
10:08:21 7	characters changed – or strike that.	10:10:22 7	facility that created a right to suspend it upon
10:08:23 8	Did this cast of characters change with	10:10:28 8	Oakwood's bankruptcy?
10:08:25 9	respect to the transaction or proposed transaction	10:10:29 9	MR. OSNATO: Objection as to the form.
10:08:31 10	that was referred to as the warehouse facility in	10:10:30 10	Asked by whom?
10:08:35 11	the weeks leading up to and shortly following	10:10:31 11	MR. CASTANARES: You may answer.
10:08:39 12	Oakwood's bankruptcy?	10:10:32 12	A. Yes.
10:08:40 13	MR. OSNATO: Objection as to the form.	10:10:33 13	Q. Who asked you to do that?
10:08:42 14	You can answer.	10:10:36 14	A. An Oakwood officer. Precisely whom, I
10:08:44 15	A. Now, what do you mean –	10:10:39 15	don't recall.
10:08:46 16	Q. Was it the same people?	10:10:39 16	Q. And did you make any such efforts?
10:08:48 17	A. When you refer to the warehouse	10:10:42 17	A. Yes.
10:08:51 18	facility are you referring to the loan purchase	10:10:43 18	Q. And at any time after the putting into
10:08:53 19	facility?	10:10:49 19	place of the facility of early 2001 that we have
10:08:54 20	Q. I'm talking about –	10:10:51 20	been talking about, as distinguished from
10:08:56 21	You are aware, sir, that in the weeks	10:10:56 21	obtaining a waiver of a provision in that
10:08:59 22	preceding up to the bankruptcy of Oakwood on	10:10:58 22	facility, was there any effort to put together a
10:09:06 23	November 15th, 2002 CSFB was acting as financial	10:11:02 23	new facility of that type?
10:09:11 24	adviser to Oakwood?	10:11:04 24	MR. OSNATO: Objection as to the form.
10:09:13 25	MR. OSNATO: Objection as to the form.	10:11:06 25	Q. Including after Oakwood's bankruptcy.

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1	Fiachra O'Driscoll	1	Fiachra O'Driscoll
12:27:05 2	A. He was in the financial institutions	12:29:34 2	some shape or form as well.
12:27:08 3	advisory group.	12:29:36 3	Q. And did he say why they felt that way?
12:27:09 4	Q. All right. And just generally	12:29:39 4	A. I don't recall enough about the
12:27:12 5	speaking, what kind of services did that group	12:29:41 5	conversation to say.
12:27:18 6	perform for GreenPoint?	12:29:43 6	Q. Based upon your knowledge of the
12:27:21 7	A. I don't know.	12:29:45 7	industry trends, et cetera, was there any -- did
12:27:23 8	Q. Okay. Who runs that group now?	12:29:48 8	you need him to tell you why they felt that way or
12:27:29 9	A. It's run by two gentlemen, Eric Varvel	12:29:51 9	did you --
12:27:33 10	and Mark Granetz.	12:29:5110	A. No.
12:27:36 11	Q. And they're both here in New York?	12:29:5211	Q. Did you understand why they felt that
12:27:39 12	A. I am not sure, actually.	12:29:5312	way?
12:27:41 13	Q. Okay. Do you recall that at some point	12:29:5313	A. Yes.
12:27:58 14	or another there was a proposition put to CRM	12:29:5414	Q. What was it?
12:28:03 15	about a \$75 million reverse repurchase facility?	12:29:5515	A. At that period of time, that was a
12:28:08 16	A. Yes.	12:29:5716	period of time in which Bank of America in
12:28:08 17	Q. I believe in earlier testimony you	12:29:5917	particular was, quote, unquote, making a big push
12:28:10 18	talked about a reverse repurchase facility as	12:30:0218	into the investment banking industry, into a
12:28:12 19	being similar in some respect to a warehouse or	12:30:0419	variety of different things, into straight
12:28:15 20	asset purchase facility, am I correct?	12:30:0620	investment banking advisory activities, M&A,
12:28:19 21	A. It might be or it might not be	12:30:1021	corporate bond offerings like the one that they
12:28:21 22	depending on the circumstances.	12:30:1222	did right around that time. But also mortgaged
12:28:23 23	Q. Okay.	12:30:1823	securitizations and my piece of the business, if
12:28:23 24	A. In this particular instance that	12:30:1924	you will.
12:28:25 25	reverse repurchase facility was actually pretty	12:30:2025	And they were very aggressive at that

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1	Fiachra O'Driscoll	1	Fiachra O'Driscoll
12:28:29 2	dissimilar.	12:30:22 2	point in time. And while I don't want to suggest
12:28:30 3	Q. "Pretty dissimilar"?	12:30:26 3	that they complied with the law, they skirted very
12:28:32 4	A. Pretty dissimilar.	12:30:30 4	close to the fed rules about linking together the
12:28:33 5	Q. In what respects was it dissimilar?	12:30:35 5	provision of credit together with seeking other
12:28:36 6	Now, we're not talking --	12:30:37 6	banking services to come their way.
12:28:37 7	A. For one thing --	12:30:40 7	So they had made it very clear to not
12:28:37 8	Q. -- about 75 million --	12:30:42 8	just Oakwood, but I saw the same thing with
12:28:38 9	A. -- in truth, I think I'd need to see	12:30:45 9	Comseco, I saw the same thing I think with
12:28:41 10	the documents to refresh my recollection of	12:30:4710	Clayton Homes as well, that they were putting
12:28:43 11	exactly what was in there. I know one of the	12:30:5211	companies under a good deal of pressure to -- in
12:28:45 12	things it provided for was financing securities as	12:30:5512	exchange for credit give them further assignments
12:28:48 13	well as financing loans.	12:30:5813	and further opportunities to earn fees from either
12:28:53 14	Q. Okay. And whose idea was it to --	12:31:0114	underwriting, securities underwriting businesses,
12:28:57 15	Who brought up this potential facility,	12:31:0315	or from investment banking advisory businesses.
12:28:59 16	was it you, or was it Oakwood, or was it some	12:31:0616	Q. Okay. I may have misunderstood what
12:29:02 17	third party?	12:31:0817	you said before. I hope you'll clarify this for
12:29:03 18	A. Oakwood on a couple of occasions,	12:31:1018	me.
12:29:06 19	specifically Doug Muir, made it clear to us that	12:31:1119	I had understood that you told me that
12:29:13 20	their other banking relationships, in particular	12:31:1220	B of A was pressuring Oakwood to get Credit Suisse
12:29:16 21	Bank of America and First Union, who were -- had a	12:31:1621	First Boston to lend money, did I misunderstand
12:29:22 22	broader relationship with Oakwood and were also	12:31:1922	you?
12:29:26 23	providing direct credit to Oakwood, were putting	12:31:2223	A. May I rephrase myself?
12:29:29 24	him under a good deal of pressure and saying that	12:31:2424	Q. Yeah. And let me phrase this a little
12:29:32 25	Credit Suisse should also provide financing in	12:31:2625	broaden.

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1	Fiachra O'Driscoll	1	Fiachra O'Driscoll
12:31:26 2	A. Yeah.	12:33:02 2	customers, generally speaking at that point in
12:31:26 3	Q. Because -- and I think what I	12:33:04 3	time is -- back in the days when we were a pure
12:31:27 4	understood you to say in response was that B of A	12:33:08 4	commercial bank we simply extended credit to you.
12:31:30 5	was trying to get investment banking business, so	12:33:12 5	Now -- and I'm not suggesting that they
12:31:32 6	I'm confused by the two answers.	12:33:15 6	didn't stay within the law. But they were making
12:31:34 7	A. No. And I'm not sure if I mispoke or	12:33:17 7	it very clear to customers that their continued
12:31:39 8	whether alternatively it could easily be	12:33:22 8	provision of credit in whatever shape or form it
12:31:41 9	misunderstood.	12:33:26 9	was provided was going to be contingent on getting
12:31:42 10	Doug's response to that pressure that	12:33:30 10	a bigger share of the assignments, both advisory
12:31:44 11	was clearly being applied to him was to say, well,	12:33:36 11	assignments and also securities underwriting
12:31:48 12	the counter to that is that Credit Suisse has to	12:33:40 12	business that that company had to offer.
12:31:55 13	step up. At which point it's harder for Bank of	12:33:43 13	Q. Okay. So now I think perhaps I
12:31:58 14	America to be demanding a bigger share of the	12:33:45 14	understand. Let me see if I've got it.
12:32:00 15	services if Credit Suisse is also seen as	12:33:47 15	And so Muir's reaction was that if CSFB
12:32:03 16	providing the same sort of facilities.	12:33:50 16	wants to keep B of A from horning in on its
12:32:09 17	Q. Okay. Now I'm probably even more	12:33:54 17	investment banking service it's got to lend some
12:32:11 18	confused.	12:33:56 18	money?
12:32:12 19	Are you telling me that you understood	12:33:57 19	MR. OSNATO: Objection as to the form.
12:32:15 20	what Mr. Muir said to be that in order for CSFB to	12:33:58 20	I'm not sure that accurately
12:32:18 21	continue to get --	12:33:59 21	characterizes his testimony.
12:32:19 22	THE WITNESS: I hate to interrupt, but	12:34:01 22	But you can tell us if that's right.
12:32:21 23	weren't we going to take a pit stop at 12:30?	12:34:03 23	A. For clarity, at that point in time we
12:32:25 24	MR. OSNATO: We are going to break for	12:34:05 24	weren't providing what in the industry would be
12:32:26 25	lunch. Why don't we finish this line of	12:34:08 25	regarded as being investment banking services,
		166	168

1	Fiachra O'Driscoll	1	Fiachra O'Driscoll
12:32:27 2	questioning.	12:34:10 2	which would typically be seen as -- the euphemism
12:32:28 3	THE WITNESS: And then we'll take a	12:34:12 3	for investment banking advisory services. What we
12:32:30 4	break?	12:34:16 4	were providing, of course, was securities
12:32:31 5	MR. OSNATO: If that's okay. And then	12:34:18 5	underwriting services.
12:32:31 6	it is -- we are at about the three hour mark,	12:34:20 6	And what Doug made it fairly clear was
12:32:34 7	so...	12:34:23 7	that he was going to have to give larger
12:32:35 8	MR. CASTANARES: Now that the question	12:34:25 8	assignments and more, perhaps, lead assignments,
12:32:36 9	stands where it is interrupted, I don't care	12:34:29 9	and perhaps sole assignments to Bank of America if
12:32:38 10	whether we do it before lunch or after.	12:34:34 10	it was not possible for him to counter argue
12:32:40 11	MR. OSNATO: Are you sure?	12:34:37 11	to Bank of America that, in fact, Credit Suisse
12:32:41 12	MR. CASTANARES: So if you want to	12:34:41 12	First Boston was also committing credit on a
12:32:42 13	break, that's fine with me.	12:34:44 13	comparable basis.
12:32:43 14	THE WITNESS: If I may, can I clarify	12:34:45 14	Q. All right. And that's what gave rise
12:32:44 15	the point?	12:34:47 15	to this requested \$75 million reverse repurchase
12:32:45 16	MR. OSNATO: Let's leave a clean record	12:34:51 16	facility?
12:32:46 17	and then pick up after lunch.	12:34:54 17	A. I think that that is -- that is the
12:32:49 18	MR. CASTANARES: Fine.	12:34:56 18	assumption that I drew at the time.
12:32:52 19	MR. OSNATO: Do you need the question	12:34:58 19	MR. CASTANARES: Okay. Great. This is
12:32:54 20	read back? I mean, are you clear what you're	12:34:59 20	a good place to break for lunch.
12:32:55 21	answering?	12:35:01 21	MR. OSNATO: It is good?
12:32:56 22	THE WITNESS: Yeah, I'm clear as to the	12:35:02 22	Thank you.
12:32:57 23	question.	12:35:04 23	THE VIDEOGRAPHER: Okay. We'll go off
12:32:58 24	MR. CASTANARES: Okay.	12:35:06 24	the record at 12:35, tape 2.
12:33:00 25	A. Bank of America's approach to	12:35:11 25	(Luncheon recess: 12:35 p.m.)
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1	Fiacra O'Driscoll	1	Fiacra O'Driscoll
13:32:54 2	sale under the repurchase. But because it's not an optional repurchase, because it's a compulsory repurchase the accounting profession has always	13:34:48 2	A. Yes.
13:32:58 3	viewed these things as being financing from an accounting point of view, without regard to the legal form in which these things are taken.	13:34:49 3	Q. And what benefit would Oakwood derive from this transaction?
13:33:02 4		13:34:51 4	A. Because it would get cash from the arrangement in much the same way as it would through a straightforward loan arrangement.
13:33:05 5		13:34:52 5	Q. And how would CSFB be compensated in such a transaction?
13:33:07 6		13:34:55 6	A. It would earn the difference between the price at which it purchased the security and the price at which it sold back the security. And usually that was calculated such as to be a spread, a spread over some form of bank price, usually LIBOR or something of that sort. So in essence you're earning -- in the difference between the two prices you're earning an interest rate.
13:33:09 7		13:34:58 7	Q. Right. Okay. Thank you.
13:33:11 8		13:35:01 8	Now, were you the person at CSFB who carried this proposal within the company primarily?
13:33:12 9		13:35:04 9	A. What do you mean by "carried"?
13:33:1210		13:35:05 10	Q. Well, I mean somebody submitted presumably --
13:33:1411		13:35:07 11	176
13:33:1812		13:35:10 12	
13:33:2013		13:35:13 13	
13:33:2314		13:35:16 14	
13:33:2715		13:35:22 15	
13:33:2916		13:35:25 16	
13:33:3117		13:35:28 17	
13:33:3218		13:35:31 18	
13:33:3419		13:35:32 19	
13:33:3620		13:35:32 20	
13:33:4021		13:35:35 21	
13:33:4422		13:35:37 22	
13:33:4623		13:35:38 23	
13:33:5024		13:35:41 24	
13:33:5325		13:35:43 25	
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1	Fiacra O'Driscoll	1	Fiacra O'Driscoll
13:33:56 2	that period of time.	13:35:44 2	A. Yeah.
13:33:57 3		13:35:44 3	Q. -- some sort of proposal to CRM on this transaction. Somebody may have -- if somebody at CRM or else the New York branch wanted to know about it, know about Oakwood, whatever, they'd probably turn to someone, was that person you?
13:33:59 4		13:35:47 4	A. Well, can I separate those two things into one --
13:34:02 5		13:35:48 5	Q. Definitely. Uh-huh.
13:34:03 6		13:35:51 6	A. -- one part?
13:34:05 7		13:35:53 7	Q. Tell me what your role was.
13:34:07 8		13:35:58 8	A. The answer for the first part was, yes,
13:34:08 9		13:36:00 9	I was the one, if I recall, responsible for
13:34:10 10		13:36:01 10	submitting that thing to credit, either directly
13:34:11 11		13:36:02 11	or someone at my instruction. As for the second
13:34:13 12		13:36:03 12	part, it wouldn't necessarily be me.
13:34:17 13		13:36:04 13	Q. Okay. Do you recall whether anybody
13:34:19 14		13:36:06 14	from CRM inquired of you in any way regarding this
13:34:21 15		13:36:08 15	proposed transaction?
13:34:23 16		13:36:10 16	A. I do not recall a specific instance.
13:34:26 17		13:36:12 17	Q. Do you recall furnishing any
13:34:29 18		13:36:16 18	information to CRM about Oakwood, or its
13:34:32 19		13:36:17 19	transactions, or business?
13:34:34 20		13:36:23 20	A. I don't recall it. Again, I don't
13:34:35 21		13:36:28 21	
13:34:38 22		13:36:32 22	
13:34:41 23		13:36:34 23	
13:34:44 24		13:36:38 24	
13:34:48 25		13:36:41 25	
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1	Fiachra O'Driscoll	1	Fiachra O'Driscoll
13:40:31 2	collegial consultation. Which was as a practical	13:42:05 2	And from that date till the date of the bankruptcy
13:40:35 3	matter, he would normally, almost invariably	13:42:08 3	a guy called Joe Donovan was my supervisor.
13:40:38 4	consult with his superiors before making a credit	13:42:12 4	Q. All right. Do you know whether
13:40:40 5	decision.	13:42:13 5	Mr. Weingord or Mr. Donevan ever interacted
13:40:40 6	Q. All right. Let me -- maybe I've asked	13:42:18 6	directly or had any communication with any Oakwood
13:40:41 7	this question inartfully. As a matter of fact,	13:42:20 7	people?
13:40:43 8	I'm sure I have. So let me try it again.	13:42:22 8	A. I don't recall.
13:40:45 9	Did this transaction need any form of	13:42:29 9	Q. Now, in terms of economic risk --
13:40:47 10	approval other than credit risk management	13:42:3010	which I'm trying to separate that out from any
13:40:5111	approval in order for it to be --	13:42:3311	legal questions involved -- what is the difference
13:40:5212	A. Yeah.	13:42:3812	on the Credit Suisse side between reverse
13:40:5213	Q. -- to move forward?	13:42:4113	repurchase and the asset purchase facility that
13:40:5414	A. Typically I would need to get my	13:42:4514	was done a year later?
13:40:5615	supervisor's approval for the transaction before	13:42:4815	MR. OSNATO: I'm going to object to the
13:40:5816	it would appear. And depending on the specific	13:42:4916	form of the question.
13:41:0017	entity that was actually going to provide the	13:42:5817	A. It would depend on the circumstances.
13:41:0218	finance, I might also need to get approval from	13:43:0218	Q. Were there different economic risk
13:41:0619	the head of that business unit.	13:43:0419	characteristics between the -- I mean, aside from
13:41:0820	You -- if you'll forgive me, one of the	13:43:0820	the size of the line --
13:41:1021	earlier questions you asked, the reason I was a	13:43:0921	A. Uh-huh.
13:41:1222	little confused was you said the New York branch	13:43:0922	Q. -- were there different economic risk
13:41:1423	with respect to the reverse repo. And technically	13:43:1323	characteristics from CSFB's perspective in the
13:41:1824	it wouldn't have been the New York branch.	13:43:1624	\$75 million reverse repurchase proposal and the
13:41:1925	Because the New York branch had a certain kind of	13:43:2025	proposal a year later that resulted in the asset
		182	184
1	Fiachra O'Driscoll	1	Fiachra O'Driscoll
13:41:23 2	financings that it would do and could do, whereas	13:43:23 2	purchase line?
13:41:25 3	a reverse repo would have been something that	13:43:24 3	A. There would have been, yes.
13:41:28 4	was done out of the broker-dealer, out of	13:43:25 4	Q. And what were they?
13:41:31 5	Credit Suisse First Boston Corporation.	13:43:27 5	A. The reverse repo line was intended, if
13:41:32 6	Q. Okay.	13:43:29 6	I recall -- and I don't have the documents in
13:41:32 7	A. So I would have had to potentially go	13:43:32 7	front of me so I don't -- you know, you'll have to
13:41:34 8	to not just my supervisor, but also to somebody	13:43:34 8	forgive me. If you refresh my recollection, we'll
13:41:37 9	within the business unit who handled those things	13:43:37 9	put the documents in front of me, it may be
13:41:4010	on a day to day to get their approval as well.	13:43:3910	somewhat different.
13:41:4311	Q. Who was your supervisor at that time?	13:43:4011	But the reverse repo line had a fairly
13:41:4512	A. What date was that?	13:43:4212	significant element of loans -- sorry, of
13:41:4513	That was 1999?	13:43:4413	securities within it, maybe the whole lot, as a
13:41:4614	Q. So it's late '99, early 2000.	13:43:4714	way of financing those loans. It was also a much
13:41:4815	A. It was a gentleman by the name of	13:43:5015	shorter term. Typically these things were not
13:41:5016	Phil Weingord.	13:43:5216	three-year committed lines. Typically those
13:41:5417	Q. Phil Weingart?	13:43:5517	things were at three month, or six month, or some
13:41:5418	A. Gord, g-o-r-d.	13:43:5718	shorter period of time.
13:41:5419	Q. Oh, gord. Okay.	13:43:5919	I don't recall what the period of time
13:41:5420	And did that change before Oakwood's	13:43:5920	was that the commitment was for this reverse repo,
13:41:5521	bankruptcy, the identity of your supervisor?	13:44:0321	but it would have been very short. So both the
13:42:0022	A. Yes.	13:44:0522	assets were different and the maturity of the
13:42:0023	Q. Who -- just tell me what happened in	13:44:0823	exposure was very different.
13:42:0124	that regard.	13:44:0924	Q. Would the shorter maturity of the
13:42:0325	A. He left to go to Deutsche Bank in 2000.	13:44:1125	exposure have tended to increase or decrease the
		183	185

1	Fiachra O'Driscoll	1	Fiachra O'Driscoll
13:44:15 2	risk characteristics of the line from the perspective of CSFB?	13:46:45 2	or not approved.
13:44:18 3	A. Decrease.	13:46:46 3	Q. Did you ever receive a copy –
13:44:20 4	Q. And would the asset mix have tended to increase or decrease that exposure?	13:46:48 4	Did you ever see a copy of the report
13:44:22 5	A. As opposed to outright loans?	13:46:48 5	that Xanthea wrote in January of 2008 turning this down?
13:44:25 6	Q. As opposed – I'm trying to contrast the CSFB risk in the proposed reverse repo proposal with the risk in the asset purchase proposal, which was adopted approximately a year later. And I believe you told me that the one aspect was the difference in maturity and the other had to do with the securities themselves.	13:46:51 6	A. No.
13:44:27 7	So I'm asking you if the difference in the securities themselves was greater or presented greater risks to CSFB in one transaction than the other or lesser ones?	13:46:52 7	MR. OSNATO: Objection to the form.
13:44:29 8	A. No. Because they weren't contemporaneous in time, I didn't have occasion to make such comparison at that time. And to be honest, I'd need to go back and look at the nature of the instruments in a good deal, more detail now to make an honest assessment.	13:46:53 8	Let me – please, before you answer, let me get my objection in.
13:44:33 9	Q. Do you have any knowledge of why it was	13:46:53 9	I'm going to –
13:44:40 10	186	13:46:5410	THE WITNESS: Sorry.
13:44:48 11	13:46:5711	13:46:5712	MR. OSNATO: – object to the form of the question.
13:44:50 12	13:46:5713	13:46:5714	You can answer.
13:44:54 13	13:47:0015	13:47:0016	Do you want the question read back?
13:44:56 14	13:47:0217	13:47:0218	THE WITNESS: Yeah. Well, actually let me –
13:44:58 15	13:47:0318	13:47:0319	MR. OSNATO: Can you read back the question, please?
13:45:00 16	13:47:0420	13:47:0521	THE WITNESS: Let me rephrase my answer.
13:45:03 17	13:47:0622	13:47:0723	MR. OSNATO: Well, just listen to the original question and then provide an answer.
13:45:07 18	13:47:0924	13:47:1225	THE WITNESS: Let me rephrase my – if
13:45:09 19			188
13:45:10 20			
13:45:12 21			
13:45:15 22			
13:45:17 23			
13:45:19 24			
13:45:22 25			
1	Fiachra O'Driscoll	1	Fiachra O'Driscoll
13:45:23 2	that CRM turned one down and approved the other?	13:47:12 2	I may, rephrase my answer.
13:45:27 3	MR. OSNATO: Objection to the form.	13:47:14 3	A. In the first place it wouldn't have been James place to turn a facility down in isolation. He didn't have any authority to approve or disprove credit that I'm aware. In the second place, actually I didn't know there was such a report.
13:45:28 4	A. No.	13:47:16 4	Q. To this moment, when I asked you this question, you didn't know it?
13:45:29 5	Q. Okay. Did you have any knowledge of why CRM turned the first one down?	13:47:19 5	THE WITNESS: Can I answer that?
13:45:32 6	A. I was never actually informed that they had turned it down.	13:47:20 6	MR. OSNATO: You can absolutely answer the question.
13:45:39 7	Q. So as far as you know, it was still an open proposal a year later when the asset purchase facility was being discussed?	13:47:23 7	I, again, am going to object to the lack of foundation in the question.
13:45:42 8	A. It hadn't been discussed at that point.	13:47:25 8	But you can answer the question.
13:45:48 9	What frequently happened was that –	13:47:27 9	A. I was shown a piece of paper by our counsel yesterday to that effect, that was the first I'd ever seen or heard of it.
13:45:49 10	was one of three things. Either a credit situation would be approved, a credit situation would be declined, or very frequently a credit situation would have been left open.	13:47:29 10	Q. Okay. Now, there was another reverse repurchase facility proposed just a few months later, wasn't there, in the amount of \$50 million?
13:45:53 11	Particularly – and I don't want to cast aspersions towards my colleagues here –	13:47:31 11	A. I don't recall.
13:45:55 12	Tom Irwin, though, is one of the people who – and again, I don't want to, you know, draw comments on somebody's professional capabilities, and so on –	13:47:32 12	MR. CASTANARES: Let me see if I can help refresh your memory.
13:45:58 13	would very often leave something open. So he	13:47:33 13	
13:46:01 14	would sometimes – he would sometimes never quite tell one whether the thing was actually approved	13:47:34 14	
13:46:05 15		13:47:38 15	
13:46:08 16		13:47:39 16	
13:46:15 17		13:47:41 17	
13:46:18 18		13:47:43 18	
13:46:21 19		13:47:47 19	
13:46:24 20		13:47:50 20	
13:46:28 21		13:47:52 21	
13:46:31 22		13:47:54 22	
13:46:34 23		13:47:58 23	
13:46:37 24		13:47:59 24	
13:46:42 25		13:48:00 25	

1	Fionnuala O'Driscoll	1	Fionnuala O'Driscoll
13:48:01 2	I'll ask the reporter to mark	13:50:03 2	you'd get an outright turndown. Much more often
13:48:03 3	CSFB 512903 as 53.	13:50:06 3	it was the case that their answer was, well, can
13:48:07 4	(CSFB Exhibit 53, One-page Memorandum,	13:50:09 4	you think about whether or not you, you know, can
13:48:07 5	bearing Bates stamp No. CSFB-00512903, marked	13:50:12 5	approach this thing differently?
13:48:07 6	for identification, as of this date.)	13:50:15 6	So term sheets would have been revised,
13:48:20 7	THE WITNESS: Uh-huh.	13:50:17 7	term sheets would have been transformed in their
13:48:34 8	Q. Does this document help refresh your	13:50:19 8	nature, and you would see if there was a meeting
13:48:36 9	memory as to whether there was a proposal for a	13:50:21 9	of the minds.
13:48:38 10	\$50 million reverse repurchase facility in	13:50:22 10	Q. Okay. Now, yesterday for the first
13:48:41 11	approximately March of 2000?	13:50:23 11	time you saw Xanthos's January 2000
13:48:42 12	A. Actually, no.	13:50:28 12	recommendation; is that correct?
13:48:43 13	No, 1, there was never a second	13:50:30 13	A. Yes.
13:48:45 14	proposal. I don't think that there was ever	13:50:31 14	Q. Is that the type of document, speaking
13:48:47 15	anything that -- to the best of my knowledge,	13:50:33 15	as of that time, January 2000, that would have
13:48:50 16	there was only ever one proposal for a reverse	13:50:36 16	evidence a complete turndown of a proposal?
13:48:54 17	repo. I don't recall its exact dollar amount at	13:50:41 17	A. I never saw evidence of a complete
13:48:57 18	the time. I thought it was a \$75 million	13:50:42 18	turndown of a proposal.
13:48:59 19	proposal. There may have been revised term	13:50:45 19	Q. Okay. Were you ever aware that CSFB
13:49:02 20	sheets. It wasn't unusual actually to have	13:50:47 20	had turned down any proposals ever?
13:49:04 21	revisions of term sheets of that sort during that	13:50:49 21	MR. OSNATO: Objection as to the form.
13:49:06 22	period of time. So I don't think that there was	13:50:51 22	Q. Whether they related to Oakwood or
13:49:09 23	ever multiple proposals, certainly from my	13:50:52 23	anything else?
13:49:11 24	perspective.	13:50:53 24	A. Yes, absolutely.
13:49:12 25	Q. So if it was all one proposal you were	13:50:54 25	Q. Okay. And were these communicated to
		190	192
1	Fionnuala O'Driscoll	1	Fionnuala O'Driscoll
13:49:14 2	informed on approximately March 21, 2000 that it	13:50:55 2	you orally always?
13:49:16 3	was turned down, right?	13:50:57 3	A. They were always communicated orally.
13:49:18 4	A. No.	13:50:59 4	Q. Okay. Now, in the course of the next
13:49:19 5	Q. So this, the statement here that Irwin	13:51:04 5	few months after the \$75 million proposal was
13:49:21 6	and Xanthos informed you of, this decision is	13:51:09 6	being made to CRM, did anybody at Oakwood ask you
13:49:24 7	incorrect?	13:51:13 7	what was going on with it?
13:49:24 8	A. It's incorrect.	13:51:15 8	A. I'm sure they did, but I don't have any
13:49:25 9	Q. They never did tell you that?	13:51:18 9	specific recollection.
13:49:27 10	A. Nope.	13:51:19 10	Q. Okay. Did it ever occur to you to
13:49:27 11	Q. Okay.	13:51:21 11	wonder why you hadn't heard from CRM on this?
13:49:27 12	A. The first I heard about this was	13:51:23 12	A. There was never a situation where I
13:49:28 13	yesterday.	13:51:26 13	hadn't heard from CRM.
13:49:30 14	Q. So as far as you know, that reverse	13:51:31 14	Q. Well, this was one, wasn't it?
13:49:32 15	repo facility was still under consideration as of	13:51:34 15	A. No.
13:49:35 16	the time of Oakwood's bankruptcy in 2002?	13:51:36 16	Q. And you hadn't heard from CRM on this
13:49:39 17	A. There hadn't been significant	13:51:39 17	proposal until yesterday, right?
13:49:41 18	discussions about it and it would -- those	13:51:42 18	A. I hadn't seen a formal written
13:49:45 19	discussions were from my perspective superseded by	13:51:44 19	submission from CRM, but I -- on the various
13:49:49 20	the later loan purchase facility discussions.	13:51:48 20	things that we worked on, of which Oakwood was
13:49:51 21	Q. A year later?	13:51:51 21	only a component, I probably talked to Tom Irwin
13:49:52 22	A. Yeah. And it wasn't unusual for	13:51:54 22	every two or three days.
13:49:54 23	discussions to change in their form. Because more	13:51:56 23	Q. All right. Well, my question to you is
13:49:57 24	typically, as I said, rather than -- sometimes	13:51:58 24	did CRM ever communicate to you the turn down of
13:50:01 25	you'd get an outright approval. Very occasionally	13:52:00 25	any proposal relating to Oakwood?
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1	Fiachra O'Driscoll	1	Fiachra O'Driscoll
16:34:57 2	A. Yes.	16:43:41 2	were pushing hard to -- in exchange for its -- for
16:34:58 3	Q. -- who its officers were, whether it	16:43:47 3	taking on credit risk, pushing hard to get
16:35:00 4	had bank accounts, whether it held meetings,	16:43:50 4	mandates for investment banking advisory services,
16:35:03 5	et cetera?	16:43:53 5	securities underwriting and so on.
16:35:04 6	A. We can shortcut all those questions,	16:43:55 6	And B of A had actually kind of gone
16:35:07 7	yes.	16:43:58 7	through a transition, not just with Oakwood, but
16:35:07 8	MR. CASTANARES: Okay. Thank you.	16:44:00 8	with quite a lot of other people as we got into
16:35:07 9	We've got five minutes on the	16:44:03 9	that period of time where they actually started
16:35:08 10	videotape, so why don't we take five.	16:44:0610	retrenching and they withdrew credit from a lot of
16:35:12 11	MR. OSNATO: Okay.	16:44:0911	customers.
16:35:12 12	THE VIDEOGRAPHER: We're off the record	16:44:1012	So one of the things that was -- that
16:35:13 13	at 4:35. This is the end of tape No. 3.	16:44:1413	almost certainly the case was that the Bank of
16:40:54 14	(Recess taken.)	16:44:1614	America facility was one that Oakwood was being
16:42:11 15	THE VIDEOGRAPHER: Okay. We're back on	16:44:1915	put under at -- Bank of America was making it
16:42:12 16	the record. It's 4:42. This is tape No. 4.	16:44:2316	clear that they were looking to get out.
16:42:16 17	BY MR. CASTANARES:	16:44:2617	Furthermore, the Bank of America
16:42:17 18	Q. Do you think that the loan purchase	16:44:2818	facility was fairly short dated. I don't know
16:42:18 19	program that was instituted in early 2001 for	16:44:3019	what the term of it was, but the term was
16:42:23 20	Oakwood represented an improvement for Oakwood	16:44:3220	364 days, perhaps, that would have been fairly
16:42:25 21	over its prior facility?	16:44:3521	typical. Whereas what this facility was, was a
16:42:32 22	A. Can you expand on "improvement,"	16:44:3822	three-year committed facility.
16:42:37 23	please.	16:44:4123	Q. Anything else?
16:42:37 24	Q. Was it cheaper money?	16:44:4224	A. So having the three-year term as
16:42:38 25	A. It was slightly more expensive money.	16:44:4525	opposed to a 364-day term gave Oakwood a great
314		315	
1	Fiachra O'Driscoll	1	Fiachra O'Driscoll
16:42:41 2	Q. Okay. Was it more money?	16:44:49 2	deal more certainty that its problems of how to
16:42:43 3	A. It -- I don't recall. I think -- I	16:44:52 3	deal with its inventory of newly originated loans
16:42:46 4	think it was about the same amount.	16:44:56 4	had gone away.
16:42:49 5	Q. Okay. Did it give more leeway to the	16:44:57 5	Q. All right. Any other advantages you
16:42:53 6	company in terms of collateral quality?	16:44:58 6	can think of ever --
16:42:57 7	A. I don't know, because I actually don't	16:45:00 7	A. That was an enormous advantage, in my
16:42:58 8	know the full terms of the predecessor facility.	16:45:02 8	opinion.
16:43:01 9	Q. Can you think of any particular	16:45:03 9	Q. Can you think of any others, however
16:43:0310	advantage that this facility gave -- strike that.	16:45:0510	slight?
16:43:0611	Did the earlier facility require	16:45:0511	A. That was the salient advantage.
16:43:0712	Oakwood to give the provider of the facility	16:45:0912	Q. Okay. Were you involved in the
16:43:1113	20 percent of its stock?	16:45:1513	negotiation of the various ceilings in the
16:43:1414	A. Nope.	16:45:2014	facility on loan-to-value ratio, FICO scores,
16:43:1615	Q. Can you think of any terms of this	16:45:2315	et cetera?
16:43:1716	transaction which represented an improvement from	16:45:2416	A. Yes.
16:43:2017	Oakwood's perspective from what it had before?	16:45:2517	Q. Were you the primary person who
16:43:2318	A. Absolutely.	16:45:2718	negotiated those ratios and terms on behalf of
16:43:2419	Q. Please do.	16:45:3019	CSFB?
16:43:2420	A. There was two key things. The first	16:45:3020	A. There were several people involved in
16:43:2721	was that the Bank of America facility was a	16:45:3221	it at different points of time. I would have been
16:43:3022	short-term facility. And Bank of America -- it	16:45:3422	the main point of contact with Oakwood.
16:43:3323	was a time period when B of A had kind of reversed	16:45:3623	Q. Okay. Was anybody else in direct
16:43:3624	what we talked about earlier on. Because you may	16:45:3824	contact with Oakwood on those points?
16:43:3925	recall that I mentioned that B of A in particular	16:45:4025	A. I don't recall.

EXHIBIT E



Memorandum

To: File

From: James Xanthos

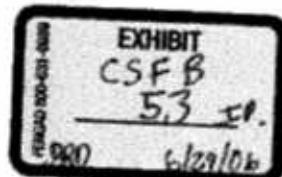
Date: March 21, 2000

Subject: Update on Oakwood Homes

On March 21, 2000, Bob O'Brien, Dan Miller, Thomas Irwin and James Xanthos discussed Oakwood Homes and the proposed \$50MM Repurchase facility.

CRM decided that it would decline this credit/financing proposal

Thomas Irwin & James Xanthos informed Fiachra O'Driscoll of this decision.



CONFIDENTIAL

CSFB-00512903

EXHIBIT F

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
OAKWOOD HOMES CORPORATION,)	Case No. 02-13396 (PJW)
<i>et al.</i> ,)	
)	Jointly Administered
Debtors.)	
)	
OHC LIQUIDATION TRUST,)	
)	
Plaintiff,)	
)	
vs.)	Adv. Proc. No. 04-57060 (PJW)
)	
CREDIT SUISSE FIRST BOSTON, <i>et al.</i> ,)	
)	
Defendants.)	

SUPPLEMENTAL REPORT OF ALAN C. SHAPIRO, PH.D.

August 28, 2007

CONFIDENTIAL

1. Introduction

In my report dated April 30, 2007, I opine that Credit Suisse First Boston did not behave in a reasonable or reasonably prudent manner with respect to services it provided to Oakwood Homes Corporation (“Oakwood”). In forming this opinion, I was asked by counsel to assume that Oakwood was insolvent in September 2001 – more than a year prior to when the company filed for bankruptcy on November 15, 2002. This assumption is based on the expert report of Dr. Michael Tennenbaum.

I have since been informed by counsel that a recent decision, *VFB LLC v. Campbell Soup Company*, 482 F.3d 624, places emphasis on the use of market data in reaching economic conclusions. Based on this additional information, I have analyzed market data to test the validity of that assumption.

This supplemental report summarizes this analysis. As I explain, market data indicate that Oakwood was economically insolvent by June 30, 2000.

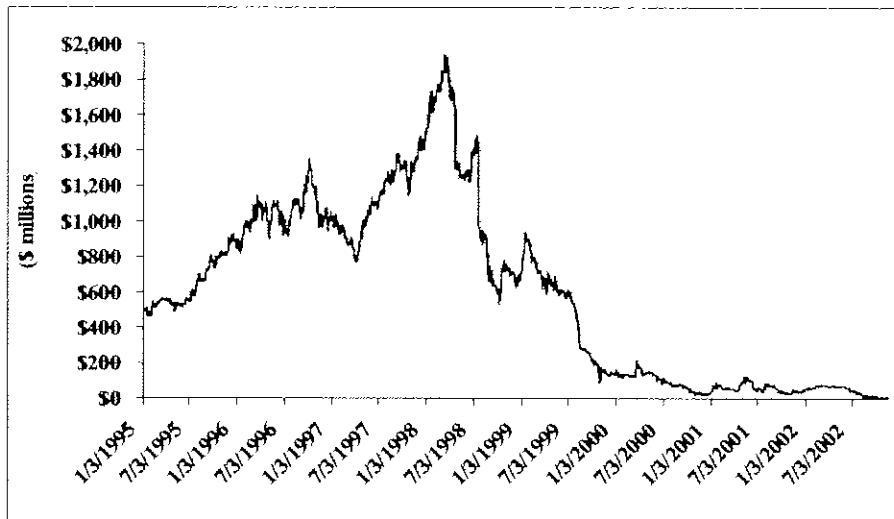
2. Market Data Demonstrate Oakwood Was Insolvent On June 30, 2000

A company is balance sheet insolvent, from an economic perspective, if the market value of its assets is less than the value of its outstanding debt. I assessed Oakwood’s economic solvency by calculating the market value of its equity and its debt (the sum of which equals the market value of its assets),¹ and comparing this figure to the company’s debt. As I show below, Oakwood was insolvent as of June 30, 2000.

Market Value of Equity

The market value of a company’s equity is obtained by multiplying its share price by the number of shares outstanding. Oakwood’s share price began a downward spiral in March 1998, declining by more than 72 percent from late March 1998 to early October 1998. After a brief recovery in late 1998, the share-price decline resumed in 1999. By September 1999, Oakwood’s shares were trading below \$5.00 and had lost nearly 90 percent of their March 1998 value. The share price fell to \$1.50 by September 2000, down 96 percent from its March 1998 value. The resulting decline in the market value of its equity is shown in Figure 1.

¹ This approach relies on the fact that the market value of assets equals the market value of claims against those assets (that is why it is called a balance sheet). These claims come in the form of debt and equity, with equity as the residual claimant receiving the value remaining (if any) after paying off all debt claims.

Figure 1: Steep Decline in Market Value of Equity Beginning in 1998

The steep decline in Oakwood's market value of equity is indicative not just of recent dismal operating performance, but of diminished expectations regarding the company's future performance, as a company's equity value represents the present value of all expected future corporate earnings. Beginning in March 1998, the market's expectations of Oakwood's future earnings declined markedly and remained low until the company's bankruptcy filing. While the market value of equity is still positive, this is just a reflection of its option value, not that it provides any cushion for the claims of bondholders.

Market Value of Debt

I then calculated the market value of Oakwood's reported debt. Exhibit 1 provides a summary of Oakwood's outstanding debt for each year from 1996 to 2002, as per its balance sheet.² To derive the market value of reported debt, I first calculated the ratio of the market price of Oakwood's 10-year, 8.125 percent coupon, \$175 million, senior note issued March 1, 1999, to its face value of \$175 million (please see Exhibit 2 for details regarding Oakwood's note issues).³ This ratio fell from 52 percent on March 31, 2000, to 30 percent on December 31, 2000, and was approximately 40 percent for 2001 and early 2002. The deep discount at which the note traded indicates that creditors did not expect to be paid in full (and were thus willing to accept 50 cents, or less, on the dollar for the debt), meaning that they considered Oakwood to be insolvent.

² Data after June 30, 2002 were not available because Oakwood did not file a Form 10-Q with the Securities and Exchange Commission for the third quarter of 2002.

³ I obtained the bond price data from JP Morgan's research website (www.morganmarkets.com). Data prior to January 2000 were not available.

As the 8.125 percent coupon senior note was the only Oakwood note or bond for which pricing was available, I used the discount on this note as a proxy for the discount on both of the notes reported on Oakwood's balance sheet.⁴ The 8.125 percent coupon bond represented between 35 percent and 49 percent of Oakwood's reported liabilities in each year from 1999 to 2002. Oakwood's other note during this period was a similar senior note, also issued March 1, 1999, with a five-year maturity, a 7.875 percent coupon rate, and a face value of \$125 million. This note represented another 25 percent to 35 percent of the company's reported liabilities during those years.

I applied the price discount on the 8.125 percent coupon note to the face value of Oakwood's notes (\$300 million) to estimate the market value of the notes for each quarter from 2000 through the second quarter of 2002. I next added the face value of Oakwood's other debt, with no discount applied, to calculate the market value of debt. I then added the market value of debt to the market value of equity to calculate the market value of Oakwood's assets (Table 1).

**Table 1: Calculation of Market Value of Assets
(in thousands, except share price)**

	3/00	6/00	9/00	12/00	3/01	6/01	9/01	12/01	3/02	6/02
Market Value of Equity										
Shares Outstanding	47,125	47,125	47,125	47,125	47,694	9,529	9,531	9,532	9,530	9,530
Share Price	\$3.81	\$1.81	\$1.50	\$0.62	\$1.06	\$5.00	\$4.15	\$5.30	\$7.20	\$4.99
MV Equity	\$179,664	\$85,414	\$70,688	\$29,453	\$50,556	\$47,645	\$39,554	\$50,520	\$68,616	\$47,555
Market Value of Debt										
BV Long-Term Debt	\$389,948	\$391,739	\$395,429	\$452,368	\$356,637	\$378,633	\$370,620	\$323,107	\$363,912	\$339,214
Discount on Face Value of Notes	48%	64%	68%	70%	58%	62%	60%	60%	59%	42%
MV of Debt	\$245,948	\$199,739	\$191,429	\$242,368	\$182,637	\$192,633	\$190,620	\$143,107	\$186,912	\$213,214
Market Value of Assets	\$425,612	\$285,153	\$262,117	\$271,821	\$233,193	\$240,278	\$230,174	\$193,627	\$255,528	\$260,769

⁴ My insolvency date conclusions do not change even if it is assumed that the 7.875% coupon note was worth its face value during the period – the market value of Oakwood's assets was still less than the company's outstanding debt by June 30, 2001.

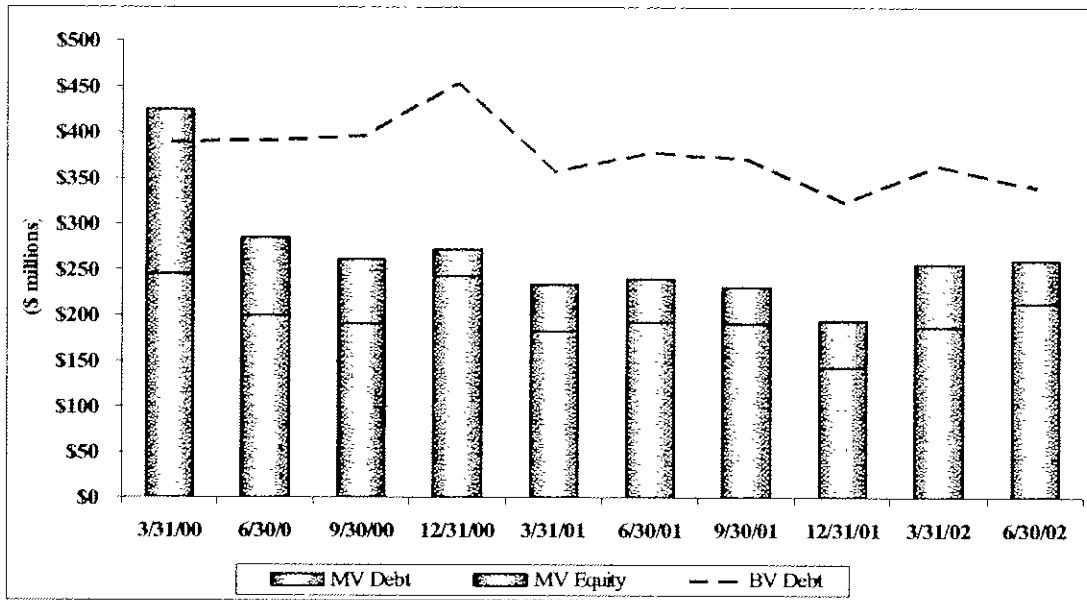
Comparing the Market Value of Assets to Outstanding Debt

I then compared the market value of assets first with the book value of reported debt. As shown in Table 2 and Figure 2, Oakwood was insolvent as of June 30, 2000. The market value of Oakwood's assets is less than the book value of the company's reported debt for each quarter from June 2000 through June 2002. The difference is never less than \$78 million. That is, for each quarter from June 2000 to June 2002, Oakwood's balance sheet debt exceeded the market value of its assets by at least \$78 million.

This analysis understates Oakwood's insolvency, as it does not include the Company's off-balance sheet liabilities, such as those associated with the guarantees on the principal and interest payments of \$275 million of subordinated B-2 REMIC securities (the B-2 guarantees are discussed in my original report).

Table 2: Market Value of Assets Less than Face Value of Debt (\$ 000)

	3/00	6/00	9/00	12/00	3/01	6/01	9/01	12/01	3/02	6/02
MV Equity	\$179,664	\$85,414	\$70,688	\$29,453	\$50,556	\$47,645	\$39,554	\$50,520	\$68,616	\$47,555
MV of Debt	\$245,948	\$199,739	\$191,429	\$242,368	\$182,637	\$192,633	\$190,620	\$143,107	\$186,912	\$213,214
MV Assets	\$425,612	\$285,153	\$262,117	\$271,821	\$233,193	\$240,278	\$230,174	\$193,627	\$255,528	\$260,769
BV Debt	\$389,948	\$391,739	\$395,429	\$452,368	\$356,637	\$378,633	\$370,620	\$323,107	\$363,912	\$339,214
MV Assets Less BV Debt	\$35,664	-\$106,586	-\$133,313	-\$180,547	-\$123,444	-\$138,355	-\$140,446	-\$129,480	-\$108,384	-\$78,445
Insolvency Conclusion	No	Yes								

Figure 2: Market Value of Assets Below Book Value of Debt by June 30, 2000

CSFB's Own Analysis Is Consistent with My Findings

CSFB also concluded that the market value of Oakwood's assets was less than the value of the debt owed by the company by June 2001. In a presentation dated June 26, 2001, CSFB calculated the market value of Oakwood's assets as \$358 million, compared with total debt outstanding of \$460 million.⁵ In a March 2002 presentation, CSFB also calculated the market value of Oakwood's assets (\$238.4 million) to be less than the company's outstanding debt (\$324.1 million).⁶ As such, CSFB's own internal analysis demonstrated that Oakwood was economically insolvent by no later than June 2001. CSFB's analysis also understates Oakwood's insolvency as it does not include liabilities associated with the B-2 guarantees.

⁵ CSFB 00052973.

⁶ CSFB 00033241.

Oakwood Solvency Analysis
Exhibit 1
Oakwood's Existing Debt per 10-K Filings

In Thousands USD

	1996	1997	1998	1999	2000	2001	2002
Short Term Notes	\$175,000	\$175,000	\$282,200	\$144,800	\$64,000	\$49,000	\$49,000
12.58% subordinated notes payable 1997 - 2001	\$8,350	\$7,372	\$4,692	\$2,075	\$2,075	\$2,075	\$2,075
8.65% Notes Due 2000	\$22,936	\$9,699	\$3,246	\$2,231	\$2,231	\$2,231	\$2,231
10.5% subordinated notes payable 2001 to 2004	\$12,954	\$12,954	\$11,876	\$8,837	\$8,837	\$8,837	\$8,837
Term Notes Due July 2000	\$25,740	\$18,334	\$11,076	\$12,615	\$12,615	\$12,615	\$12,615
Capitalized Leases	\$4,916	\$3,835	\$3,270	\$174,050	\$174,120	\$174,196	\$174,280
8 1/8% senior notes due March 2009				\$124,693	\$124,754	\$124,819	\$124,930
7 7/8% senior notes due March 2004				\$5,492	\$7,099	\$6,700	\$6,200
Industrial revenue bonds due in installments through 2011	\$2,250	\$2,125	\$2,025	\$1,925	\$1,825	\$1,825	\$1,825
Industrial revenue bonds due in installments through 2001	\$4,700						
Industrial revenue bonds due in installments through 1996	\$8,000	\$4,000					
Facilities Loans due in installments through 1996	\$39,908	\$16,945					
8% reset debentures due 2007	\$2,945	\$2,351	\$2,542	\$3,474	\$2,187	\$1,711	\$2,159
Other notes payable	\$1,680	\$1,200	\$720	\$240			
FSOP Notes							
Total	\$309,379	\$253,815	\$344,084	\$496,964	\$393,929	\$372,120	\$358,167

Source: Oakwood 10-K filings

Oakwood Solvency Analysis

Exhibit 2

Details of Bonds Issued

8 1/8% senior notes due March 2009

Settlement Date 3/2/1999

Maturity Date 3/1/2009

Coupon 8.125%

Amount Issued (\$mil.) \$175.0

7 7/8% senior notes due March 2004

Settlement Date 3/2/1999

Maturity Date 3/1/2004

Coupon 7.875%

Amount Issued (\$mil.) \$125.0